

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

**WILLIAM BRINSDON**, on behalf of his minor  
child, **B.B.**,

Plaintiff,

v.

**COMPLAINT**

[Civil Rights Action under 42  
U.S.C. § 1983]

**MCALLEN INDEPENDENT SCHOOL  
DISTRICT, YVETTE CAVAZOS**, individually  
and in her official capacity as a teacher in the  
McAllen Independent School District,  
**REYNA SANTOS**, individually and in her official  
capacity as a teacher in the McAllen Independent  
School District,

**DECLARATORY & INJUNCTIVE  
RELIEF SOUGHT**

Defendants.

**COMPLAINT**

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William Brinsdon, on behalf of his minor child, Plaintiff B.B., by and through their undersigned counsel, together bring this civil rights Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof allege the following upon information and belief:

**INTRODUCTION**

1. The longstanding jurisprudence of the United States Supreme Court forbids teachers from compelling schoolchildren to pledge their allegiance to a country: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein. If there are any circumstances which

permit an exception, they do not now occur to us. *We think the action of the local authorities [or teachers] in compelling the flag salute and pledge transcends constitutional limitations on their power, and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.*” *West Virginia State Bd. Of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (emphasis added).

2. This case seeks to protect and vindicate fundamental constitutional rights. It is a civil rights action brought under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983, challenging Defendants’ acts, policies, practices, customs, and/or procedures, which deprived Plaintiff B.B. of her right to freedom of speech and the equal protection of the law by discriminating against her because of her viewpoint on the issue of being forced to pledge allegiance to the Mexican flag. These acts, policies, practices, customs, and/or procedures also infringe the constitutional rights of other students in the school district, including Plaintiff B.B., by chilling the exercise of their right to freedom of speech.

3. As set forth in this Complaint, the policies, practices, customs, and/or procedures of Defendant McAllen Independent School District (hereinafter referred to as “School District”) and its failure to adequately train and supervise its employees, including Defendant Yvette Cavazos and Reyna Santos, were each a moving force behind the constitutional violations in this case.

4. Plaintiff seeks a declaration that Defendants violated Plaintiff’s clearly established constitutional rights; a declaration that the training, supervision, policies, practices, customs, and/or procedures of the School District as set forth in this Complaint violate the United States Constitution; an injunction enjoining the unconstitutional application

of the School District's policies, practices, customs, and/or procedures as set forth in this Complaint; and a judgment awarding nominal damages for the past loss of Plaintiff B.B.'s constitutional rights. Plaintiff also seeks an award of her reasonable costs of litigation, including attorneys' fees and costs, pursuant to 42 U.S.C. § 1988 and other applicable law.

### **JURISDICTION AND VENUE**

5. This action arises under the Constitution and laws of the United States. Jurisdiction is conferred on this court pursuant to 28 U.S.C. §§ 1331 and 1343.

6. Plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this court. Plaintiff's claims for damages are authorized under 42 U.S.C. § 1983 and by the general legal and equitable powers of this court.

7. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district.

### **PLAINTIFF**

8. William Brinsdon is an adult resident of the State of Texas. He is the father and legal guardian of Plaintiff B.B., his minor child. He brings this action on behalf of Plaintiff B.B. as her next friend.

9. Plaintiff B.B. is a minor. At all relevant times, she was a student at the Achieve Early College High School, which is a school within the School District. Plaintiff B.B. is currently a junior at the Achieve Early College High School in McAllen, Texas.

### **DEFENDANTS**

10. The School District is a public entity established and organized under, and pursuant to, the laws of the State of Texas with the authority to sue and be sued in its own

name. Achieve Early College High School is a school operated by and located within the School District.

11. The School District and its officials are responsible for creating, adopting, approving, ratifying, and enforcing the policies, practices, customs and/or procedures of the district, including the unconstitutional policies, practices, customs, and/or procedures set forth in this Complaint.

12. The School District and its officials are responsible for the training and supervision of its teachers, including the training and supervision of Defendants Yvette Cavazos and Reyna Santos. The School District's failure to adequately train and supervise its employees, including Defendants Yvette Cavazos and Reyna Santos, was a moving force behind the constitutional violations set forth in this Complaint.

13. Defendant Yvette Cavazos was at all relevant times the principal at Achieve Early College High School employed by the School District. As the principal, Defendant Yvette Cavazos is required to enforce the policies, practices, customs and/or procedures of the School District, including the unconstitutional policies, practices, customs, and/or procedures set forth in this Complaint. At all relevant times, Defendant Yvette Cavazos was a principal in the School District.

14. Defendant Reyna Santos was at all relevant times a teacher at Achieve Early College High School employed by the School District. As a teacher, Defendant Reyna Santos is required to enforce the policies, practices, customs and/or procedures of the School District, including the unconstitutional policies, practices, customs, and/or procedures set forth in this Complaint. At all relevant times, Defendant Reyna Santos was a teacher in the School District.

### STATEMENT OF FACTS

15. In September of 2011, Plaintiff B.B. was a 15-year-old Sophomore at the Achieve Early College High School located in the School District.

16. Plaintiff B.B. at that time was enrolled in Intermediate Spanish at the Achieve Early College High School.

17. Plaintiff B.B. is of Mexican decent and is a first generation American citizen.

18. Plaintiff B.B. is fluent in Spanish, and speaks Spanish with her mother who immigrated to the United States from Mexico.

19. Plaintiff B.B. is proud of her American and Mexican heritage and culture.

20. Plaintiff B.B.'s Intermediate Spanish class was taught under the direction of teacher Defendant Reyna Santos.

21. On September 12, 2011, Plaintiff B.B. attended Defendant Santos' Spanish class.

22. September 12, 2011 occurred just one day after the tenth anniversary of the 9-11 terror attacks and during "Freedom Week," at the Achieve Early College High School in McAllen Texas, a school of Defendant School District.

23. "Freedom Week" was a week-long celebration at the Achieve Early College High School in which the school honored the memorial of 9-11 and Constitution Day through various activities.

24. On or about September 12, 2011, Defendant Reyna Santos announced that all students in her Intermediate Spanish class were required to stand up and recite the Mexican National Anthem and the Mexican Pledge of Allegiance in front of the class.

25. The lyrics of the Mexican National Anthem are as follows:

Mexicanos, al grito de guerra  
El acero aprestad y el bridon;

y retiemble en sus centros la tierra  
Al sonoro rugir del canon.  
Cina -oh patria! tus sienes de olivo  
De la Paz el arcangel divino,  
Que en el cielo tu eterno destino  
Por el dedo de Dios se escribio.  
Mas si osare un extraño enemigo  
Profanar con su planta tu suelo,  
Piensa -oh patria querida! que el cielo  
Un soldado en cada hijo te dio.  
Guerra, guerra sin tregua al que intente  
De la patria manchar los blasones!  
Guerra, guerra! Los patrios pendones  
En las olas de sangre empapad.  
Guerra, guerra! En el monte, en el valle  
Los canones horrisonos truenen  
Y los ecos sonoros resuenen  
Con las voces de -Union! -Libertad!  
Antes, patria, que inermes tus hijos  
Bajo el yugo su cuello dobleguen,  
Tus campinas con sangre se rieguen,  
Sobre sangre se estampe su pie.  
Y tus templos, palacios y torres  
Se derrumben con horrido estruendo,  
Y sus ruinas existan diciendo:  
De mil heroes la patria aqui fue.  
Patria! -patria! Tus hijos te juran  
Exhalar en tus aras su aliento,  
Si el clarin con su belico acento  
Los convoca a lidiar con valor.  
Para ti las guirnaldas de oliva!  
Un recuerdo para ellos de gloria!  
Un laurel para ti de victoria!  
Un sepulcro para ellos de honor!  
Mexicanos, al grito de guerra  
El acero aprestad y el bridon,  
y retiemble en sus centros la tierra  
Al sonoro rugir del canon.

26. Translated into English, the lyrics of the Mexican National Anthem are as follows:

Mexicans, at the cry of battle  
lend your swords and bridle;  
and let the earth tremble at its center

upon the roar of the cannon.  
Your forehead shall be girded, oh fatherland, with olive garlands  
by the divine archangel of peace,  
For in heaven your eternal destiny  
has been written by the hand of God.  
But should a foreign enemy  
Profane your land with his sole,  
Think, beloved fatherland, that heaven  
gave you a soldier in each son.  
War, war without truce against who would attempt  
to blemish the honor of the fatherland!  
War, war! The patriotic banners  
saturate in waves of blood.  
War, war! On the mount, in the vale  
The terrifying cannon thunder  
and the echoes nobly resound  
to the cries of union! liberty!  
Fatherland, before your children become unarmed  
Beneath the yoke their necks in sway,  
May your countryside be watered with blood,  
On blood their feet trample.  
And may your temples, palaces and towers  
crumble in horrid crash,  
and their ruins exist saying:  
The fatherland was made of one thousand heroes here.  
Fatherland, fatherland, your children swear  
to exhale their breath in your cause,  
If the bugle in its belligerent tone  
should call upon them to struggle with bravery.  
For you the olive garlands!  
For them a memory of glory!  
For you a laurel of victory!  
For them a tomb of honor!

27. The Mexican Pledge of Allegiance states,

Bandera de México,  
Legado de Nuestros Héroes,  
Símbolo de la Unidad  
de nuestros Padres  
y de nuestros Hermanos.

Te prometemos:

Ser siempre fieles  
a los principios de

la libertad y la justicia,  
que hacen de Nuestra  
Patria la Nación  
Independiente, humana  
y generosa a la que  
entregamos nuestra  
existencia.

28. In English, the Mexican Pledge of Allegiance states,

Mexican flag  
legacy from our heroes  
symbol of the unity of our ancestors  
and our brothers

We promise you:

To be always loyal  
to the principles of freedom and justice  
that makes this an independent,  
human and generous nation,  
to which we dedicate our existence.

29. Plaintiff B.B., as a matter of conscience, felt that it was not right to pledge her allegiance and loyalty to another country when her allegiance lies with the United States. Plaintiff B.B. sees pledging her allegiance to another country through being compelled to state a loyalty oath as an exhibition of patriotism to that country.

30. Plaintiff B.B. confided her beliefs to principal Defendant Yvette Cavazos, and informed Defendant Cavazos that she would not participate in pledging her allegiance to Mexico because she did not believe it was right, or words to that effect.

31. Defendant Cavazos told Plaintiff B.B. that she should participate in the assignment and that the assignment was part of the curriculum.

32. After Plaintiff B.B. articulated that she would not be pledging her allegiance to Mexico in order to complete the assignment, Plaintiff B.B. received an alternative assignment to write an essay on the history of the independence of Mexico.



33. The assignment was to write at least a half a page paper about the independence of Mexico. Defendant Santos was not clear on the criteria for which Plaintiff B.B. would be graded on this alternative assignment.

34. The essay assignment given to Plaintiff B.B. differed greatly from the required oral project assigned to the rest of the class in the form of reciting the National Anthem of Mexico and pledging their allegiance to Mexico.

35. Plaintiff B.B. was only given one day to complete the assignment. The Plaintiff wrote  $\frac{3}{4}$  of a page and summarized the events that occurred regarding the independence of Mexico, and turned in the alternative assignment.

36. Plaintiff B.B. was never allowed to recite the American Pledge of Allegiance in Spanish in front of the class as an alternative assignment.

37. Students in Defendant Santos' Intermediate Spanish class recited the Mexican Pledge of Allegiance over the next several days. Plaintiff B.B. sat in class and listened to student after student pledging his/her allegiance, a loyalty oath, to the country of Mexico.

38. The flag of Mexico was put up and displayed in Defendant Santos' classroom.

39. When Plaintiff B.B. discussed her objections to pledging her allegiance to Mexico, Defendant Santos replied by telling Plaintiff B.B. that she grew up in Mexico and loved Mexico, or words to that effect.

40. Plaintiff B.B. received a 13 out of 100 on the alternative essay assignment Defendant Santos made her complete. A "13" represented a failing grade. Neither Defendant Santos nor Cavazos explained why Plaintiff B.B. received a failing grade on the alternative assignment.

41. Prior to Defendant Santos giving Plaintiff B.B. a failing grade on the alternative

essay assignment, Plaintiff B.B. had been performing above average on her assignments in Intermediate Spanish class. Plaintiff B.B. is fluent in both Spanish and English.

42. Both the alternative essay assignment and its grading were in retaliation of Plaintiff B.B. exercising her constitutional right not to be forced to pledge her loyalty to Mexico.

43. The School District has the policy and practice of requiring its teachers to teach about foreign culture, and leaves unfettered discretion to its teachers to interpret and apply its directives.

44. The School District has a written policy regarding “instructional resources” and “instructional materials selection and adoption,” which states that “The Board shall rely on District professional staff to select and acquire instructional resources that . . . [r]epresent many ethnic, religious, and cultural groups and their contributions to the national heritage and world community.” This policy was a moving force behind the constitutional violations set forth in this Complaint.

45. Teachers and administrators of the School District, including Defendants Santos and Cavazos, were directed and trained pursuant to the School District’s policy which allows District staff to use any instructional resource that may represent an ethnic or cultural group.

46. Defendant Santos executed School District policy and her School District bestowed training when she compelled Plaintiff B.B. and the Intermediate Spanish class at the Achieve Early College High School to pledge its allegiance to Mexico.

47. Defendant Cavazos executed School District policy and her School District bestowed training when she encouraged Plaintiff B.B. to pledge her allegiance to Mexico, as the assignment to do so was part of the curriculum.

48. Defendant School District defended these actions when it appointed a School

District spokesman, Mark May, to speak to the media, explaining that it is required for upper-level language class to teach about foreign culture, or words to that effect.

49. Mark May also stated on behalf of the School District, referring to pledging one's allegiance to Mexico, "In my mind it's no different from memorizing a poem or memorizing a passage from Shakespeare," or words to that effect.

50. Mark May also stated on behalf of the School District, referring to compelling students to pledge their allegiance to Mexico, "[t]he students came away with a better understanding of the culture, heritage and customs of a neighboring country where Spanish is the primary language," or words to that effect.

51. However the School District has a written policy upon which a student can be excused from reciting text from the Declaration of Independence if the student "as determined by the District, has a conscientious objection to the recitation." The written policy does not mandate the excused student write a lengthy essay as a substitution for the recitation of the text rich in American history and ideals.

52. On or about the morning of October 18, 2011, Defendant Cavazos called Plaintiff B.B. into the school office. Defendant explained that since Plaintiff B.B.'s decision not to pledge her allegiance to Mexico garnered media attention, Plaintiff B.B. would be removed from Defendant Santos' Intermediate class until the attention subsided, or words to that effect.

53. Plaintiff B.B. was assigned to stay in the school office during what would have regularly been Defendant Santos' Intermediate Spanish class. Plaintiff B.B. desired to return to the Spanish class, but the School District and Defendants Santos and Cavazos disallowed this. Defendants also neglected to ever inform William Brinsdon, Plaintiff B.B.'s father.

54. Plaintiff B.B.'s school counselor informed Plaintiff B.B. that her removal from

Defendant Santos' Intermediate Spanish class would be permanent. When Plaintiff B.B. asked why, the school counselor told Plaintiff B.B. that she would need to ask Defendant Cavazos.

55. Plaintiff B.B. then received an "F," a failing grade, on her report card in Defendant Santos' class, when Plaintiff B.B. had not been allowed to attend the course.

56. Plaintiff B.B.'s counsel wrote a letter addressing their concerns on December 15, 2011, and the School District never responded. *See* (Exhibit 1- Letter from the Thomas More Law Center to Defendant Cavazos dated December 15, 2011).

57. The School District has created a school environment that favorably promotes recitation of loyalty to Mexico and disfavors patriotism and loyalty to the United States of America.

58. The School District's policies, practices, customs, and/or procedures encourage school officials, including Defendant Santos and Cavazos, to disfavor opinions, ideas, and viewpoints which support patriotism and the recitation of the historical texts of the United States, such as the viewpoint held by Plaintiff B.B., while promoting patriotism and the recitation of loyalty to Mexico.

59. The School District trains and supervises its employees, including Defendants Santos and Cavazos, to disfavor opinions, ideas, and viewpoints which support patriotism and the recitation of the historical texts of the United States, such as the viewpoint held by Plaintiff B.B., while promoting patriotism and the recitation of loyalty to Mexico.

60. The School District's training, supervision, policies, practices, customs, and/or procedures and the actions of Defendants Cavazos and Santos, which were done pursuant to the training, supervision, policies, practices, customs, and/or procedures of the School District, has a chilling effect on the expression of viewpoints that support American patriotism, including the

expression of the viewpoint held by Plaintiff B.B. as set forth in this Complaint.

**FIRST CLAIM FOR RELIEF  
(Freedom of Speech—First Amendment)**

61. Plaintiff hereby incorporates by reference all stated paragraphs.

62. By reason of the aforementioned training, supervision, acts, policies, practices, customs and/or procedures created, adopted, and enforced under color of state law, Defendants deprived Plaintiff of her right to freedom of speech in violation of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

63. On or about September 12, 2011, Defendants Santos and Cavazos, acting pursuant to School District training, supervision, policies, practices, customs, and/or procedures, compelled Plaintiff B.B. to pledge her allegiance to Mexico violating her from right to freedom of speech.

64. Defendants' actions injured Plaintiff B.B. in a way likely to chill a person of ordinary firmness, including Plaintiff B.B. and other students in the School District, from further participation in patriotic speech activity.

65. Plaintiff B.B.'s constitutionally protected speech motivated Defendants Santos and Cavazos' adverse actions. Consequently, Defendants Santos and Cavazos acted with a retaliatory intent or motive.

66. The School District's policies, practices, customs, and/or procedures as set forth in this Complaint were the moving force behind the violation of Plaintiff B.B.'s right to freedom of speech, and these policies, practices, customs, and/or procedures have had a chilling effect on the free speech rights on Plaintiff B.B. in violation of the First Amendment.

67. The School District's failure to adequately train and supervise its employees as set forth in this Complaint was a moving force behind the violation of Plaintiff B.B.'s right to freedom of speech, and this failure to adequately train and supervise has had a chilling effect on the free speech rights of Plaintiff B.B. in violation of the First Amendment.

68. By favoring speech that approves of and promotes allegiance to Mexico over Plaintiff's patriotic speech, Defendants Santos and Cavazos' violation of Plaintiff B.B.'s right to freedom of speech was viewpoint based in violation of the First Amendment.

69. The School District's training, supervision, policies, practices, customs, and/or procedures were the moving force behind the violation of Plaintiff B.B.'s right to freedom of speech.

70. Defendants' policy was selectively enforced against Plaintiff B.B. to compel speech in violation of the First Amendment.

71. Defendants' policy as applied against Plaintiff B.B.'s speech on or about September 12, 2011, violated the First Amendment.

72. Defendants compelled Plaintiff to profess beliefs contrary to her own by pledging her allegiance to another country than to that, the United States, which she is loyal.

73. As a direct and proximate result of Defendants' violation of the First Amendment, Plaintiff has suffered irreparable harm, including the loss of her fundamental constitutional rights, entitling her to declaratory and injunctive relief. Additionally, Plaintiff B.B. is entitled to nominal damages for the past loss of her constitutional rights.

74. Defendants actions violated Plaintiffs' right to be free from compelled speech as secured by the First Amendment of the United States Constitution.

75. Defendants' assignment to have their students pledge their allegiance to Mexico is not narrowly tailored to a compelling governmental interest.

**SECOND CLAIM FOR RELIEF**  
**(Equal Protection—Fourteenth Amendment)**

76. Plaintiff hereby incorporates by reference all stated paragraphs.

77. By reason of the aforementioned training, supervision, acts, policies, practices, customs, and/or procedures created, adopted, and enforced under color of state law, Defendants have deprived Plaintiff of the equal protection of the law guaranteed under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

78. By favoring and compelling speech that promotes and approves of allegiance to Mexico punishing Plaintiff's less favored view toward American patriotism, Defendants have violated the Equal Protection Clause of the Fourteenth Amendment.

79. Defendants' policy, as described in this Complaint, was selectively enforced against Plaintiff B.B. on account of her viewpoint in violation of the Equal Protection Clause of the Fourteenth Amendment.

80. Defendants' policy, as described in this Complaint, as applied against Plaintiff B.B.'s speech on or about September 12, 2011, violates the Equal Protection Clause of the Fourteenth Amendment.

81. By favoring speech that approves of and promotes allegiance to Mexico over Plaintiff's Patriotic speech, Defendants Cavazos and Santos deprived Plaintiff B.B. of the equal protection guarantee of the Fourteenth Amendment.

82. The School District's training, supervision, policies, practices, customs, and/or procedures that were the moving force behind the violation of Plaintiff B.B.'s fundamental constitutional rights that deprived Plaintiff B.B. of the equal protection guarantee of the Fourteenth Amendment.

83. As a direct and proximate result of Defendants' violation of the Equal Protection Clause, Plaintiff has suffered irreparable harm, including the loss of her fundamental constitutional rights, entitling her to declaratory and injunctive relief. Additionally, Plaintiff B.B. is entitled to nominal damages for the past loss of her constitutional rights.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff asks this court:

A) to declare that Defendants violated Plaintiff's fundamental constitutional rights as set forth in this Complaint;

B) to declare that Defendants' training, supervision, policies, practices, customs, and/or procedures that promote a school environment that favors and compels allegiance to Mexico and disfavors American patriotic viewpoints violates Plaintiff's fundamental constitutional rights to freedom of speech and the equal protection of the law as set forth in this Complaint;

C) to declare that Defendants' policy is unconstitutional as set forth in this Complaint;

D) to permanently enjoin Defendants' policy as applied to expression as set forth in this Complaint;

E) to award Plaintiff B.B. nominal damages against all Defendants;

F) to award Plaintiff her reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law;

G) to grant such other and further relief as this court should find just and proper.



**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury of all issues triable of right by a jury.

Date: February 27, 2013

Respectfully submitted,

NAJVAR LAW FIRM

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*\*Pro hac vice pending*