



September 5, 2018

Julie A. Bunt, Acting Director
Office of Charter & Renaissance Schools
New Jersey Department of Education
P.O. Box 500
Trenton, NJ 08625

Dear Ms. Bunt:

Education Law Center writes to follow up on our email to you dated August 28, 2018, requesting an investigation of recent, troubling events at Marian P. Thomas Charter School (MPTCS) in which large numbers of students were allegedly excluded from school for minor school uniform violations. Through news accounts and reports that we have received from parents and community members in the last week, we have obtained additional facts about the incident. We have also read what we perceive to be an inadequate response letter from MPTCS (see enclosed copy, available at: <https://www.mptcs.org/cms/lib/NJ02212986/Centricity/Domain/4/UniformPolicyLetter2018.pdf>). In addition, we have been retained by parent, M.B., who has authorized us to file a formal complaint with your Office about the treatment of her son, S.M., by MPTCS and to seek an investigation regarding his treatment and that of any similarly situated students. Our renewed request incorporates M.B.'s circumstances, as well as other additional information.

As requested on August 28th, and reinforced in this letter, it is imperative that your Office investigate reports of improper student exclusions by MPTCS, review the MPTCS uniform policy, and ensure that the policy is appropriate and being enforced in a fair and lawful manner that contributes to the school's stated mission of creating a learning environment that helps students develop the skills necessary to be college and career ready. If violations are found, your Office should ensure that corrective action is taken, including, but not limited to, any necessary policy revisions, staff training on policy implementation, reimbursement of out-of-pocket expenses, and any necessary correction of student records. We further request that your Office determine whether the imposition of probationary conditions on MPTCS's charter or disciplinary action against MPTCS administrators and staff is warranted.

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While there is no doubt that MPTCS can impose a reasonable uniform policy, we specifically request investigation of the problems set forth below.

Uniform Policy Crackdown without Adequate Notice

MPTCS apparently made the unwise decision to rigorously enforce its uniform policy on the first day of the 2018-19 school year, without adequately notifying families of this decision and in a manner that was inconsistent with its past practice. None of the parents we have spoken to, including M.B., received written or telephone notice that MPTCS would be enforcing its dress code differently than in the past. For example, one parent sent his daughter to school in the exact same pair of shoes that she wore last year, which were then deemed insufficiently "black" to meet the new policy. As a result, he had to spend an additional \$65 on a new pair of shoes. Other parents have been in a similar situation as they have scrambled to meet the new requirements, having to shop quickly and on little-to-no notice in order to prevent their children from missing additional school time. This is especially difficult with the work schedules of some parents, who cannot easily go clothes shopping in between school days. Some parents were even forced to replace brand new articles of clothing that were purchased in anticipation of the new school year, that are now considered out-of-compliance with the uniform policy, though they were considered compliant last year (and therefore, to the best of parents' knowledge, would be acceptable again this year). M.B. could not initially locate all-black sneakers in her son's size and, knowing that her son wore an array of non-conforming footwear to MPTCS during 2017-18, had no reason to believe that black sneakers with white soles would be unacceptable during 2018-19. She spent \$190 on black Nike sneakers with white soles for S.M., and, after her son was excluded from school (as described below), spent another \$90 to purchase an all-black pair of Air Force One sneakers.

ELC asks that your Office investigate MPTCS's past enforcement of its uniform policy, the notice provided to families of any changes in enforcement, and the out-of-pocket expenses of families who had to make double purchases in order to comply with the MPTCS uniform policy. Corrective action for violations should address the reasonableness of MPTCS's uniform policy, and its implementation, require staff training on policy implementation, and reimburse families for their double expenditures.

Exclusion from School in Violation of Policy and Legal Obligation

MPTCS's crackdown on its uniform policy was coupled with the blatantly illegal exclusion of students from school. Based on news and other reports, at least 50, if not

more, students were turned away from MPTCS on August 28th for minor or trivial non-compliance with aspects of the uniform policy, such as failure to wear all-black shoes, or failure to have a belt. This action was reportedly taken without contacting parents and without asking them to pick up their minor children from school. Although ELC has yet to see the MPTCS uniform policy, we have been told that violations of that policy are supposed to result in in-school suspension, not exclusion from school. As we understand it, MPTCS's exclusion of students from school was undertaken without providing any of the due process protections codified at N.J.A.C. 6A:16-7.2 and 7.3. More importantly, however, MPTCS's action in excluding children from school during school hours violated its basic legal duty to safeguard the welfare of its students. As expressed by the New Jersey Supreme Court:

The law imposes a duty on children to attend school and on parents to relinquish their supervisory role over their children to teachers and administrators during school hours. While their children are educated during the day, parents transfer to school officials the power to act as the guardians of those young wards. No greater obligation is placed on school officials than to protect the children in their charge from foreseeable dangers, whether those dangers arise from the careless acts or intentional transgressions of others. Although the overarching mission of a board of education is to educate, its first imperative must be to do no harm to the children in its care. A board of education must take reasonable measures to assure that the teachers and administrators who stand as surrogate parents during the day are educating, not endangering, and protecting, not exploiting, vulnerable children.

Frugis v. Bracigliano, 177 N.J. 250, 268 (2003) (also noting that school "stands in *parens patriae*, in the role of a parent, to students while they are entrusted to its care," 177 N.J. at 282.)

The decision of MPTCS administrators to turn students away from school during the school hours for which they are legally responsible for them raises extremely serious concerns about their judgment and training. It is critical that your Office confirm the numbers of students who were turned away from school by MPTCS without parental notification or pick-up. ELC asks that your Office investigate all records maintained by MPTCS related to its uniform policy enforcement on August 28th, including phone records and sign-out logs, and that your Office interview all affected families. ELC further asks that your Office investigate whether students improperly excluded were recorded as having unexcused absences from school. Corrective action must include consideration of any or all of the following: the imposition of probationary conditions

on MCPTCS's charter; disciplinary action against responsible MPTCS administrators and staff; any necessary policy changes; any necessary corrections to impacted student records; and staff training.

Retaliatory Action in Violation of the First Amendment

As you may have seen in online reports of the incident, a concerned citizen identified as Thomas Ibiang filmed MPTCS students who were gathered in a nearby park after being excluded from school on August 28th. One of those students was S.M., who, with no intent to appear in a video, merely answered the questions put to him by Mr. Ibiang and explained that he was not allowed into school because his black sneakers had white soles. After his mother hustled to obtain all-black shoes for her son to attend school the next day, she and S.B. were informed by MPTCS staff that he did not meet residency requirements. M.B. maintains that she submitted residency documentation, as required, during the prior school year and subsequently received no notices of potential non-compliance with residency requirements, as would have been mandated by N.J.A.C. 6A:22-4.2. M.B.'s efforts to provide proof of residency were rebuffed by MPTCS¹ and she was instead issued a card transferring S.M. out of his charter school. According to M.B., MPTCS summarily disenrolled her son. This action was not taken in response to M.B.'s request – to the contrary, she was seeking to get her son admitted to school – and she believes the action was retaliation for statements by S.M. that were videotaped. M.B. has decided against returning S.M. to MPTCS because she does not trust that there will not be further retaliation against her son. She, nonetheless, wants to ensure that corrective action is taken against MPTCS, so that any similarly affected students who want to be reinstated can be, and so that this type of retaliation does not happen again. ELC specifically requests that your Office investigate the removal of S.M. from MPTCS's rolls, including the records of any alleged residency investigation conducted by MPTCS for S.M., or any alleged notice of the purported ineligibility of S.M. to attend MPTCS based on residency grounds. As with the exclusion of students from school, corrective action for retaliation must include consideration of any or all of the following: the imposition of probationary conditions on MCPTCS' charter; disciplinary action against responsible MPTCS administrators and staff; any necessary policy changes; corrections to any impacted student records; and staff training.

¹ Among other actions, M.B. reports that the MPTCS receptionist had to be restrained by fellow staff members from physically attacking M.B. upon her entry into the school on August 29th.

We look forward to your response and hope that your Office will take this matter seriously and undertake an investigation of these practices. If we can provide additional information, please do not hesitate to contact Elizabeth Athos at 973-624-1815, ext. 20.

Sincerely,



Rich Frost
Harvard Law School Public Service Venture Fund Fellow



Elizabeth Athos, Esq.
Senior Attorney

Via email only
Encls.

Cc: Donna Arons, DAG
Commissioner Lamont Repollet
Misha Simmonds, Interim Chief School Administrator, MPTCS



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A Message From MPTCS

Uniform Policy 2018



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*"It takes a village
to raise a child"*

PAC Academy
PreK-8th Grade
(Temporary Address)
18 Norfolk St.
Newark, NJ 07103
PH: 973.621.0080, ext. 3
FAX: 973.792.0066

STEAM Academy
PreK-8th Grade
370 S. 7th St.
Newark, NJ 07103
PH: 973.621.0080, ext. 1
FAX: 973.621.0061

SELECT Academy
K - 7th Grade
88-108 Shipman St.
Newark, NJ 07102
PH: 973.621.0080, ext. 2
FAX: 973.643.4982

**High School of Culinary
& Performing Arts**
9th - 12th Grade
125 Sussex Ave.
Newark, NJ 07103
PH: 973.621.0080, ext. 4
FAX: 973.624.8018

Central Office | Mailing Address
125 Sussex Ave.
Newark, NJ 07103
PH: 973.621.0080, ext. 4008
FAX: 862.240.1212

August 28, 2018

Dear MPTCS Village:

Yesterday marked the kick-off for our 2018-2019 school year. We launched one new school – PAC Academy, a performing arts and culinary themed PreK-8 school; introduced STEAM Academy, our newly themed science, technology, engineering, arts and math elementary school and men from our community helped SELECT Academy, our single gender-focused school, start the new school year. We wanted to share this good news with you first, because it was overshadowed by videos that were featured on social media.

Since its inception, Marion P. Thomas Charter School has had a uniform policy. The policy is intended to help our school promote a more effective learning environment, foster school unity and bridge socioeconomic differences between children. Wearing a uniform teaches students appropriate dress and decorum in school, helps to improve student conduct and discipline and prepares them for their future workplace.

Our high school team wanted to ensure our students complied with this policy, for all of the reasons aforementioned. Their best intentions led to some students being asked to return home. We have communicated with our families who were impacted by this decision. While we realize school policies are important, we recognize that our students' well-being is our utmost importance. Therefore, we have implemented a process that will not compromise the safety of our high school students.

We know you have a choice when it comes to your child(ren)'s education. We thank you for trusting us to take them from crayons to college and careers.

We look forward to working with all our families for a successful and productive school year.

Regards,

Misha Simmonds
Interim Chief School Administrator