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May 19, 2017

Mr. Alexander Dan
Interim School Director
Mystic Valley Regional Charter School
4 Laurel Street
Malden, MA 02149

Re: Mystic Valley Regional Charter School "Hair/Make-Up" Policy

Mr. Dan:

Thank you for taking the time to meet with Attorney General Healey, other representatives of this office, and representatives from the Department of Elementary and Secondary Education yesterday afternoon. We appreciated the opportunity to hear from you. As we discussed, the Office of the Attorney General has significant concerns about, and is investigating, the substance and application of Mystic Valley Regional Charter School's "Hair/Make-Up" policy, particularly as it has recently been applied to prohibit students of color from wearing certain hair styles—and to punish them for doing so.

State law prohibits discrimination by public schools, including charter schools, against students "on account of race, color, sex, gender identity, religion, national origin or sexual orientation." G.L. c. 76, § 5. Federal law includes similar protections.¹ We are concerned that MVRCS's Hair/Make-Up policy violates state and federal law, on its face and/or as applied, by subjecting students of color, especially black students, to differential treatment and thus denying them the same advantages and privileges of public education afforded to other students. *Id.*

Specifically, MVRCS's Hair/Make-Up policy includes a number of prohibitions that are either unreasonably subjective or appear to effectively single out students of color. For example:

¹ Federal law prohibits discrimination on the basis of race, color, religion, sex, or national origin by public elementary and secondary schools, and discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance. 42 U.S.C. §§ 2000c & 2000d. In addition, of course, our state and federal constitutions protect students' rights to due process and equal protection.



- The policy prohibits “*drastic* or *unnatural* hair colors or styles” and “hairstyle[s] that could be *distracting* to other students”—terms that are undefined, vague, and inherently subjective.
- The policy specifically prohibits “*shaved lines or shaved sides*” as examples of drastic or unnatural hair styles, and “*hair more than 2 inch in thickness or height*”² as an example of hair that is distracting and thus not allowed. These prohibitions appear to specifically reference hair styles such as “fades” that are commonly worn by black male students, and “Afros” that are most likely to be worn by black students (both male and female). These styles are not simply fashion choices or trends, but, in addition to occurring naturally in many cases, can be important expressions of racial culture, heritage, and identity.
- The policy also specifically prohibits “*hair extensions*.” This prohibition appears to specifically reference hair styles, such as braided extensions, that are more likely to be worn by black female students. Braids and extensions are likewise not simply fashion choices or trends, but also can be important expressions of racial culture, heritage, and identity, in addition to serving very practical needs unique to black women and girls.

Although we share MVRCS’s stated concerns about “promoting equity” and “reducing visible gaps between those of different means,”³ the foregoing portions of the Hair/Make-Up policy are not reasonably tailored to those goals, if they bear any relation at all. Based on our review thus far, MVRCS’s policy is more restrictive than comparable policies at other charter schools, suggesting that there are less restrictive (and potentially less discriminatory) alternatives available. Most important, to the extent that certain provisions of MVRCS’s policy have the purpose or effect of singling out students of color, they are clearly unlawful.⁴

² We understand from our discussion that this particular part of the policy pertaining to hair height is no longer being enforced. However, it still appears in the student handbook and initially was implemented as part of the broader policy.

³ Letter from Interim School Director Alexander Dan to Mystic Valley Regional Charter School Parents and Guardians, dated May 12, 2017.

⁴ See, U.S. Dept. of Education & U.S. Dept. of Justice, Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline, dated Jan. 8, 2014 (“Intentional discrimination also occurs when a school adopts a facially neutral policy with the intent to target students of a particular race for invidious reasons. This is so even if the school punishes students of other races under the policy. For example, if school officials believed that students of a particular race were likely to wear a particular style of clothing, and then, as a means of penalizing students of that race (as opposed to as a means of advancing a legitimate school objective), adopted a policy that made wearing that style of clothing a violation of the dress code, the policy would constitute unlawful intentional discrimination.”); Richards v. Thurston, 424 F.2d 1281, 1286 (1st Cir. 1970) (“Once the personal liberty is shown, the countervailing interest must either be self-evident or be affirmatively shown. We see no inherent reason why decency, decorum, or good conduct requires a boy to wear his hair short. . . . We do not believe that mere unattractiveness in the eyes of some parents, teachers, or students, short of uncleanness, can justify the proscription. Nor, finally, does such compelled conformity to conventional standards of appearance seem a justifiable part of the educational process.”); see also Lopez v. Commonwealth, 463 Mass. 696 (2012) (recognizing disparate impact liability under state laws prohibiting employment discrimination); Burbank Apartments

Furthermore, although our investigation is still ongoing, there appears to be substantial evidence that the Hair/Make-Up policy is—at best—inconsistently applied. For example, we have found photographs on social media sites (some belonging to the school and school officials) that show students in clear violation of the Hair/Make-Up policy, including a number of white students with “shaved sides” and “coloring, dying [sic], lightening . . . or streaking.” To the extent that MVRCS has applied the policy unequally to punish students of color more frequently or more harshly than other students,⁵ that too is clearly unlawful.⁶

Accordingly, in light of the gravity of these concerns, it is critical that MVRCS immediately cease enforcing or imposing discipline for violations of the following provisions of the Hair/Make-Up policy, including any ongoing or planned discipline of Mya and Deanna Cook, while we continue our investigation of this matter: the provision prohibiting “shaved lines or shaved sides”; the provision prohibiting “hair more than 2 inch in thickness or height”; and the provision prohibiting “hair extensions.”

We understand from a conversation with your counsel that, following our meeting, you have decided to allow Deanna Cook to participate, at least in part, in this weekend’s track meet, and that the Board of Trustees plans to hold an emergency meeting this Sunday night. Please confirm immediately after that Board meeting that Mya, Deanna, and any other students currently being punished for violating these provisions may immediately resume all school activities (including extracurricular and athletic activities) and that the school will not enforce the foregoing provisions of the Hair/Make-Up policy pending the outcome of our investigation.

Tenant Ass’n v. Kargman, 474 Mass. 107 (2016) (same for housing discrimination); Currier v. Nat’l Bd. of Med. Examiners, 462 Mass. 1 (2012) (same for discrimination in public accommodations).

⁵ We note, for example, that the most recent data available from the Department of Elementary and Secondary Education indicates that while black students make up less than 18% of the MVRCS student body, they make up more than 38% of students disciplined for all offenses, and more than 41% of students disciplined for “non-drug, non-violent or non-criminal-related offenses.” See 2015-16 Student Discipline Data Report, available at <http://profiles.doe.mass.edu/ssdr/default.aspx?orgcode=04700000&orgtypecode=5&leftNavId=12565&TYPE=DISTRICT&fycode=2016>.

⁶ See, e.g., Fuller v. Rayburn, 161 F.3d 516 (8th Cir. 1998) (permitting black student to pursue discrimination claim where there was evidence that school policy was not applied equally to white students); see also Hollins v. Atlantic Co., 188 F.3d 652, 661 (6th Cir. 1999) (inference of unlawful discrimination where employer prevented black female from wearing hair in styles deemed too “eye-catching,” while not subjecting white women to the same standard); see also Lipchitz v. Raytheon Co., 434 Mass. 493, 503 n.16 (2001) (Massachusetts Anti-Discrimination Law prohibits stereotypical thinking, whether conscious or unconscious); Thomas v. Eastman Kodak Co., 183 F.3d 38, 59-61 (1st Cir. 1999) (Title VII prohibits employment decisions based on stereotypes as well as conscious bias).

Please do not hesitate to contact me directly to discuss this further.

Sincerely,



Genevieve C. Nadeau
Chief, Civil Rights Division

cc: Neil Kinnon, Chairman, Board of Trustees
Mystic Valley Regional Charter School

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