



May 22, 2013

Dr. Joshua P. Starr, Superintendent
Montgomery County Public Schools
Carver Educational Services Center
850 Hungerford Dr., Rm. 122
Rockville, MD 20850

Re: Pledge of Allegiance

Dear Dr. Starr,

I am writing to follow up on our letter of April 9, 2013, concerning improper harassment of a Damascus H.S. student who sought to exercise her constitutional right to quietly decline to participate in the daily recitation of the Pledge of Allegiance, and in connection with the disappointing response to that letter sent on April 19, 2013, by Judith Bresler, General Counsel to the Montgomery County Public Schools (MCPS).

Among other goals, we had hoped that by bringing the incident involving Enidris Siurano-Rodriguez to your attention, as well as the other similar incidents that we are aware of, the MCPS would take meaningful steps to ensure that such incidents would not recur. To that end, we specifically sought a meeting with appropriate MCPS staff to discuss what, if any, actions had been taken in response to our prior communication on this subject, and what actions were planned in light of the current incident. We believed, and continue to believe, that a dialogue is the appropriate forum to offer our suggestions, and to receive the information that would convince us and our clients that the issue is being appropriately addressed.

Instead, our request for a meeting, renewed via email directly to Ms. Bresler on April 30¹, has been entirely ignored, and we remain in the dark about what steps MCPS is taking or has taken to address the issue. The tone and content of Ms. Bresler's response, however, leave us doubtful that meaningful efforts are being made, because one cannot effectively address a problem without recognizing that one exists. Ms. Bresler's letter not only fails to acknowledge that any problems exist, it also appears to assert that nothing inappropriate happened with respect to Ms. Siurano-Rodriguez (an assertion I respond to in detail below). That view seems inconsistent with Mr. Domergue's apology to Ms. Siurano-Rodriguez and her family, which acknowledged that the matter was handled wrongly. And we presume that you do not want other similar incidents to occur. Given that, we find Ms. Bresler's response on behalf of MCPS simply incomprehensible, and unacceptable.

Ms. Bresler claims that Ms. Siurano-Rodriguez's teacher did not "harass" her, but instead simply assumed that Ms. Siurano-Rodriguez had not heard the instruction to stand on a particular morning, and thus instructed her to stand on a single occasion. This is disingenuous in the extreme. As Ms. Bresler also acknowledges, Ms. Siurano-Rodriguez did not decline to stand on

¹ We also attempted to contact Ms. Bresler by telephone on May 18, and left a message noting that we had not received any response to our April 30 email, and have not received a call back.

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only a single occasion. In fact, she has declined to stand for the Pledge consistently since the 7th grade, a pattern that has continued in high school – the very “pattern” referred to in Ms. Bresler’s letter. And, contrary to the implication in that letter, Ms. Jennings did not direct Ms. Siurano-Rodriguez to stand on only a single occasion, but did so repeatedly, in contravention of MCPS’s clearly stated policy (which the letter acknowledges Ms. Jennings was unaware of), until the matter was, improperly, referred to Mrs. Rose, the Assistant Principal. That, indeed, constitutes “harassment.”²

Ms. Bresler also suggests that the Assistant Principal acted appropriately when faced with Ms. Jennings query about MCPS’s policy concerning students who decline to participate in the Pledge of Allegiance, suggesting that she called Ms. Siurano-Rodriguez out of class for a conference simply because she wanted “to make sure everything was OK.” Given MCPS’s clear policy on students’ right to decline to participate in the Pledge, and the clear constitutional command behind that policy, the appropriate response to Ms. Jennings’ query (which should not have been necessary in the first place) would have been to simply inform her of the relevant policy, and to direct her to allow the student to quietly remain silent during the Pledge. Here there was no indication that Ms. Siurano-Rodriguez was doing anything other than simply exercising her constitutional right to decline to participate in the Pledge. Thus, contrary to the suggestion in MCPS’s response, the Assistant Principal acted improperly in calling Ms. Siurano-Rodriguez to the office for a conference.

More importantly, however, the assertion that Ms. Siurano-Rodriguez was called to the Assistant Principal’s office so that she could make sure that Ms. Siurano-Rodriguez was “OK” is utterly at odds with the content of Mrs. Rose’s actual remarks, which are not disputed *at all* in Ms. Bresler’s response. *Nothing* about that conversation was devoted to determining whether Ms. Siurano-Rodriguez was OK. Rather, the conversation was devoted to an inappropriate attempt to criticize and belittle Ms. Siurano-Rodriguez for exercising her constitutional right to decline to participate in the Pledge.

We are also puzzled by Ms. Bresler’s assertion that Ms. Siurano-Rodriguez was “calm” during the encounter with Mrs. Rose. While that is so (and nothing in our original letter suggested otherwise), it is a testament to this young girl’s poise and fortitude. But the implication that her poise in handling this distressful situation must mean that she and her sister are not telling the truth when they reported that her sister found Ms. Siurano-Rodriguez weeping in the bathroom following the encounter with Mrs. Rose is simply offensive.

Ms. Bresler’s letter also asserts that Mrs. Rose’s telephone call to Ms. Siurano-Rodriguez’s mother was “noticeably absent” from our initial letter. But Ms. Bresler’s letter misstates the content of that call, which we indeed should have included in our letter, because it is further evidence of the Assistant Principal’s inappropriate response to this situation. While it is true that during that call Mrs. Rose acknowledged that the school could not force Ms. Siurano-Rodriguez to stand during the Pledge, she also stated that if Ms. Siurano-Rodriguez persisted in declining to stand, she would have to remain outside of the classroom while the Pledge was recited. This part of the conversation is “noticeably absent” from Ms. Bresler’s letter. And it was precisely this call, and that statement in particular, that motivated Ms. Siurano-Rodriguez’s parents to send the email referenced in Ms. Bresler’s letter (the email specifically states that Mrs. Rose called “to

² And Ms. Bresler’s response completely ignores the allegations concerning a second teacher, Mr. Brenneman, who, although he is not even Ms. Siurano-Rodriguez’s teacher, called her out of her 1st period class to berate her for not standing for the Pledge, to threaten her that she could not win this battle, and to inform her that he had had other students removed from his class for that very reason.

inform us that Enidris will be removed from the classroom during the time the pledge is being recited and will be allowed to return only after the pledge is finalized.”). Of course removing the student from the classroom during the Pledge in retaliation for her exercise of her right to decline to participate would constitute improper punishment and harassment.

Ms. Bresler also asserts that our request for written assurances that there is no mention of the incident in Ms. Siurano-Rodriguez’s school file is unnecessary, because the school recognized the student’s right not to participate, and because the school Principal apologized. It is true that Mr. Domergue appropriately apologized both to Ms. Siurano-Rodriguez, and her parents (in contrast to the tone and content of Ms. Bresler’s letter). But he did so *after* our widely publicized letter of April 9. And Ms. Bresler’s letter conspicuously refuses to confirm or deny whether any record of the incident (which obviously predates our April 9 letter) is contained in Ms. Siurano-Rodriguez’s file. If there is no record, we do not see why that cannot be formally stated for the family’s peace of mind. Contrary to Ms. Bresler’s assertion, the fact that the Principal issued a well deserved apology after one was requested in our April 9 letter has no bearing on whether an assurance about the content of school records which predate our letter is or is not necessary.

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Finally, and perhaps most importantly, Ms. Bresler breezily asserts that there is nothing surprising in the fact that we have received more complaints (six) about the issue discussed in this letter from Montgomery County public schools than any other jurisdiction in the state, because Montgomery County has the largest school system. While that may be true, in the same time frame (the last five years) we have not received a single complaint on this issue from the Howard County school system (51,177 students), and have received only a single complaint each from Baltimore County (107,033 students), Baltimore City (84,748 students), Prince George’s County (123,737 students), and Frederick County (40,527 students), numbers which are not proportional to the complaints we have received from MCPS families.

In any event, our concern is not simply with the raw number of complaints, but with the fact that the most recent incident was not simply an individual staff member who made a single innocent mistake (though the MCPS policy at issue here is, we hope you will agree, a vitally important one, and one which teachers are reasonably expected to be familiar with and follow). Rather it involved multiple teachers (one of whom specifically asserted that he had disciplined other students for the same conduct), and, more importantly, involved egregiously improper conduct by a school administrator.

While Montgomery County may have 22,236 employees (of whom approximately half are teachers), it has only 202 schools. It is more than reasonable to expect that senior administrators at those schools are, and should be, aware of the relevant rules, as the Assistant Principal clearly was not (as evidenced by her undisputed actions and statements). Our view that this reflects a systemic problem, beyond Damascus H.S., is reinforced by the fact that Mr. Tofig, the MCPS spokesperson, was quoted stating that he was unaware of *any* training for teachers or administrators regarding this issue³, despite the egregious incident in 2010 when we last contacted MCPS about students’ rights in this area (when a middle school student was removed from the classroom by school police officers because she would not stand for the Pledge; and which also involved misconduct by an assistant principal, who told the student’s mother that the student should apologize for her “defiance.”). And while Ms. Bresler’s letter refers vaguely to

³ Jen Bondeson & Peggy McEwan, *ACLU defends Montgomery student who refused to say the Pledge*, The Gazette, April 11, 2013, at <http://www.gazette.net/article/20130410/NEWS/130419654/1096/aclu-defends-montgomery-student-who-refused-to-say-the-pledge&template=gazette> (“Tofig also wrote that he is not aware that there is any training for teachers or administrators to address the issue.”).

“ongoing training” and “multiple avenues of communication,” it does not detail any concrete steps that MCPS has taken, or plans to take, to address this issue throughout the school system, either subsequent to the 2010 incident, or the latest one.

In short, while Ms. Bresler asserts that MCPS takes its responsibility to respect the constitutional rights of its 148,779 students very seriously, the tone and content of her letter belies that assertion. Despite the fact that Ms. Bresler does not contradict a *single* factual assertion in our April 9 letter, she appears to conclude that the present matter has been appropriately resolved, and has refused to respond to our request for a meeting with appropriate MCPS staff in your office to discuss any larger concerns. We frankly expected more of MCPS, and we believe that our clients are entitled to a more meaningful response.

We, and our clients, are happy to engage in a meaningful discussion about these issues, and how to best address them, both at the Damascus H.S., and in MCPS generally. But we cannot do that without a willing partner, and without a willingness to acknowledge that there is an issue to discuss. We look forward to a more positive response.

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Sincerely,

David Rocah
Staff Attorney

cc: Ms. Judith Bresler, Esq.
Mr. Christopher S. Barclay
Principal Robert Domergue