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September 8, 2015

Carolyna Manrique  
Chris Brook  
Amy L. Katz  
P.O. Box 28004  
Raleigh, NC 27611-8004

**Re: Charter Day School's Dress Code**

Dear Ms. Manrique, Mr. Brook, and Ms. Katz,

Our law firm represents the Roger Bacon Academy ("RBA"). RBA is an educational management organization that operates Charter Day School ("CDS") in Leland, North Carolina. RBA has requested that we respond to your letter dated September 2, 2015 to Ms. Lisa Edwards of CDS.

CDS appreciates Ms. Peltier's concern regarding CDS's uniform policy, which requires girls to wear "skirts, skorts, or jumpers." CDS operates under a philosophy that embraces the Constitutional rights of all its employees and students. Although CDS absolutely disagrees with your position, it takes seriously your allegations that the uniform policy violates federal and state laws regarding restrictive sex-based policies.

As evidence of CDS's concern for its students and their parents, it has put a grievance process into place by which grievances may be addressed. The grievance process is clearly and expressly stated on page 21 of the 2015-2016 Parent and Student Handbook ("Handbook"), which is available for download on CDS's website.<sup>1</sup> First, the grievance should be directed to the faculty member and/or party in which the grievance originated. Second, if not resolved with the faculty member, a meeting with the parent, faculty member, and a third party staff member related to the situation will be scheduled. Third, if the grievance is not adequately resolved, the matter will be brought to the appropriate member of school administration who will meet with the faculty member first, followed by a meeting with both parties. Fourth, if the grievance has not been resolved at this level, the Board of Trustees will meet with the aggrieved party to resolve the matter. All Board decisions are final. Obviously, Ms. Peltier has chosen to forego this process. As such, our response to your letter follows.

CDS is a recipient of federal funds and does **not** engage in any type of sex discrimination as is prohibited under Title IX. As noted by the Court in *Sturgis v. Copiah County School*

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<sup>1</sup> An electronic copy of the Handbook in Portable Document Format (PDF) is available for download at <http://charterdayschool.net/school/handbooks/>.

*District*,<sup>2</sup> the Secretary of Education amended the Title IX regulations regarding nondiscrimination on the basis of sex by revoking 34 CFR § 106.31(b)(5), which prohibited discrimination in the application of dress codes. As it stands today, § 106.31(b) does not contain any language prohibiting discrimination in the application of dress codes.<sup>3</sup> Thus, we view your allegation regarding a possible Title IX violation as meritless under the law as it has existed for over three decades.

Furthermore, any federal court decisions existing with regard to Title IX outside of the Fourth Circuit are not binding upon the Fourth Circuit, and thus do not constitute the law of the Fourth Circuit. This includes the cases cited in footnote 1 of your letter. In particular, *Hayden ex. Rel. A.H. v. Greensburg Cmty. Sch. Corp.*, 743 F.3d 569 (7th Cir. 2014), has only been cited by courts within the Seventh Circuit and by one New York court. It has not been cited by the Fourth Circuit or any North Carolina courts.

CDS agrees that all students should be able to attend school and actively participate in school related activities without unfair or unequal treatment based on sex. Per CDS's policies, during physical education and activities where pants or shorts are appropriate, such as some field trips, girls may wear shorts or pants. CDS's uniform policy does not prevent students from attending school and actively participating in school related activities and thus does not violate Fourth Circuit precedent.<sup>4</sup>

CDS further appreciates your concern that it may be engaging in sex discrimination under the North Carolina Charter School Law. As the uniform policy currently stands, CDS complies with North Carolina General Statute § 115C-218.55. In light of your remarks that "courts are likely to interpret this statute in the same way that Title IX non-discrimination requirements are interpreted," we find your allegation to be meritless for the same reason your Title IX allegation is meritless. There is no current provision of Title IX, and there has not been a provision for over three decades, prohibiting discrimination in the application of dress codes.

CDS also appreciates your concern for the Constitutional rights of its students. As is noted in Mr. Mitchell's August 3, 2015, email response to Ms. Peltier, CDS's uniform policy serves "to establish an environment in which our young men and women treat one another with mutual respect." As further noted in Mr. Mitchell's email, the "uniform policy, as is, has contributed to producing a focused learning environment with respectful, dignified student relationships." This rational relationship is evidenced by the fact that CDS consistently ranks as the highest scoring school in its county on North Carolina's End-of-Grade tests. While CDS's *educational* philosophy is based on traditional values, the uniform policy is not, as you assert, "based on notions that girls are supposed to wear dresses or skirts and only boys can wear pants." Evidence to the contrary can be seen in the physical education and field trip policy as noted

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<sup>2</sup> No. 3:10-CV-455-DPJ-FKB, 2011 U.S. Dist. Lexis 105065, at \*13 (S.D. Miss. Sept. 15, 2011).

<sup>3</sup> See 34 C.F.R. § 106.31(b).

<sup>4</sup> In particular, *Mercer v. Duke University*, 401 F.3d 199 (4th Cir. 2005), is legally and factually distinguishable. First, the case dealt with Title IX's exemption for single-sex contact sports teams. Second, the opinion regards the awarding of attorney's fees where nominal damages are awarded to a Title IX plaintiff. In fact, the majority, if not all, of the cases which cite *Mercer* is in reference to the Court's decision awarding attorney's fees.

above. As such, CDS's uniform policy does not violate the First and Fourteenth Amendments of the United States Constitution.<sup>5</sup>

Additionally, CDS's sex-based classifications regarding the uniform policy are not justified by relying on traditional values or overbroad generalizations about different talents, capacities, or preferences of males and females. As is noted above, the sex-based classifications are based on establishing "an environment in which young men and women treat one another with mutual respect," which has been shown to produce a "focused learning environment with respectful, dignified student relationships." CDS's uniform policy, as is, does not violate any Supreme Court or Fourth Circuit precedents.<sup>6</sup>

While CDS appreciates Ms. Peltier's concerns regarding the practical aspects of its uniform policy, it has proven not to be a distraction nor cause the harm you allege on pages 2 and 3 of your letter. CDS also finds your contention that "(REDACTED) is also not able to express herself or proclaim that girls can move around in the world as freely as boys do and that girls deserve respect regardless of whether they are wearing skirts or pants" to be meritless. On July 15, 2015, Ms. Peltier sent an email to Lisa Edwards in which she noted that (REDACTED) was "so excited to start [school] on Monday that *she has been sleeping in her school uniforms every night.*" (Emphasis added). A copy of the email is attached as **EXHIBIT A**.

CDS's school wide uniform policy does not violate CDS students' Constitutional and statutory rights. CDS objects to your mischaracterization and use of Mr. Mitchell's August 3, 2015, email out of context. As noted above, CDS's uniform policy serves "to establish an environment in which our young men and women treat one another with mutual respect." The uniform policy is designed to keep students safe and prevent them from experiencing harm that might otherwise arise. Mr. Mitchell noted several issues on which the uniform policy is designed to prevent:

Bullying and sexual harassment are current topics of concern almost everywhere we look. Teen pregnancies and casual sex receive concerned attention in most communities. Thus, the uniform policy seeks to establish an environment in which our young men and women treat one another with mutual respect.

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<sup>5</sup> *Massie v. Henry*, 455 F.2d 779 (4th Cir. 1972), is inapposite in this situation as the holding regarded a person's right to wear his hair as he wishes, not his clothes. There are no Fourth Circuit cases regarding Title IX dress code violations. Furthermore, the other cases cited in footnote 3 of your letter are not controlling precedent in the Fourth Circuit or North Carolina.

<sup>6</sup> Both cases cited in footnote 4 of your letter are inapplicable to this situation. First, *U.S. v. Virginia*, 518 U.S. 515 (1996), regards admission to single-sex public universities. Furthermore, the language regarding discrimination in *Virginia* deals with the loss of opportunities that women faced by not being able to attend Virginia Military Institution. There is a vast difference between a sexually discriminatory admissions policy and a uniform policy meant to encourage mutual respect between students at a co-educational institution. Second, *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), was decided under Title VII and regarded the loss of a business promotion due to sexual stereotyping. Once again, there is a vast difference between losing out on a business promotion due to sexual stereotyping and a uniform policy meant to encourage mutual respect between students at a co-educational institution. In each of the cases above, there was sexual discrimination which resulted in the loss of an educational, networking, or business opportunity. No such situation exists here.

Thus, CDS's uniform policy is legally permissible as it is designed to protect its students. CDS's uniform policy, as is, does not violate any Supreme Court or Fourth Circuit precedents.<sup>7</sup>

As you well know, the United States Supreme Court has not heard a case involving a challenge to a public school dress code or uniform policy.<sup>8</sup> Furthermore, lower courts generally side with schools and support the constitutionality of dress codes.<sup>9</sup> CDS's dress code is not discriminatory and is clearly written out such that parents and students know what is permitted.<sup>10</sup> As you admitted in your letter to CDS, the school is allowed to "impose a school wide uniform policy provided that such policy does not violate CDS students' Constitutional and statutory rights."

While CDS appreciates Ms. Peltier's concerns, we find them to be meritless. If Ms. Peltier would like her daughter to be able to wear pants or shorts to school, she is free to send her daughter to a non-charter public school, to apply for admission to another charter school, to a private school of her choosing, or to home school her daughter. As it stands, Ms. Peltier chose to send her daughter to CDS. It is not as though she was tricked into sending her daughter to CDS, she made a conscious decision to apply for admission. In light of the above going facts and the lack of legal precedent supporting Ms. Peltier's position, CDS will **not** be changing its uniform policy. The uniform policy is constitutionally and statutorily permissible and does not violate CDS students' rights in any manner.

Because CDS will not be changing its uniform policy, it will be sure to submit the documents requested in Appendix I of your letter in a reasonable time as allowed under the Open Meeting and Public Records statute.

CDS's understands its legal rights and responsibilities in replying to complaints regarding school policies. As noted above, CDS fosters an environment of mutual respect among its students. CDS also strives to foster mutual respect between parents and its employees. CDS would never undertake negative action against (REDACTED) in retaliation for their mother's decision to pursue their perceived constitutional and statutory rights.

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<sup>7</sup> *Knussman v. Maryland*, 272 F.3d 625 (4th Cir. 2001), is also legally and factually distinguishable from this situation. *Knussman* was decided under federal and Maryland medical leave laws and regarded differing benefits available to the mother and father. Once again, there is a vast difference between sexual discrimination in medical leave laws and a uniform policy meant to encourage mutual respect between students at a co-educational institution.

<sup>8</sup> See AM. CIVIL LIBERTIES UNION OF VERMONT, *Student Rights -- Dress Codes*, ACLU, [https://acluvt.org/pubs/students\\_rights/dress.php](https://acluvt.org/pubs/students_rights/dress.php) (last visited Sept. 4, 2015). A copy of this publication has been attached for your convenience as **EXHIBIT B**.

<sup>9</sup> *Id.*

<sup>10</sup> This is evidenced by CDS providing copies of the current Handbook, amendments to the Handbook, the Uniform Policy, the 2015-2016 Board Policy Handbook, and amendments to the Board Policy Handbook on its website.

Sincerely,



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Cc: Robert P. Spencer, Board of Trustee Chairman  
Dawn Carter, Trustee  
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