



MEMORANDUM

862-6341

**TO:** METROPOLITAN BOARD OF EDUCATION  
**FROM:** MIKE SAFLEY, ASSOCIATE DIRECTOR OF LAW  
**SUBJECT:** STANDARD SCHOOL ATTIRE POLICY  
**DATE:** JUNE 11, 2007

The Department of Law has been requested to review the Standard School Attire Policy ("Policy") and provide you with an opinion. A copy of that Policy is attached. Attachment A.

In 1996, the Tennessee General Assembly adopted legislation directing the State Board of Education to develop "guidelines and criteria for local adoption and enforcement of uniform clothing for public school students." 1996 Pub. Chap. 935. The State Board of Education did adopt guidelines and criteria in 1997. Attachment B. Public Chapter 935 also authorized the local boards of education, in their discretion, to adopt a uniform clothing policy. T.C.A. § 49-1-302(j)<sup>1</sup>. *See also* T.C.A. § 49-6-4215 (authorizes rules prohibiting clothing designating gang association). The Metropolitan Nashville Public Schools ("MNPS") adopted a Standard School Attire Policy on April 10, 2007.<sup>2</sup> Several questions related to constitutionally protected

<sup>1</sup> (j) The board shall develop guidelines and criteria for local adoption and enforcement of uniform clothing for public school students. These guidelines and criteria shall require that uniform clothing be simple, appropriate, readily available, and inexpensive. The board shall disseminate these guidelines and criteria to LEAs. These guidelines and criteria can be used as a tool for LEAs that may adopt uniform clothing policies. Adoption of uniform clothing policies shall be at the discretion of the local board of education.

T.C.A. § 49-1-302(j).

<sup>2</sup> THE POLICY: The Policy mandates that students wear pants, shorts, capris, skirts, skorts, or jumpers in the colors of navy blue, black, or any shade of khaki. Shirts are to be either short or long sleeved and have a collar (polo, dress style, or turtleneck) in the solid color of white or navy blue. The clothing worn must be of appropriate size. Logos are permitted on clothing but they cannot be larger than two inches. School logos are permitted under the policy and are not limited in their size. School principals may allow exceptions to the Policy up to 10 days per year. Additionally, principals can approve variations for particular groups of students. Two specific instances are detailed when a student would not be required to adhere to the Policy. The first instance is for a student wearing the uniforms of a nationally recognized student organization on days specified by the organization and approved by the school. The second instance is for a student whose bona fide religious belief, medical or special education needs conflict with the Policy. The principal has discretion in granting the variance from the Policy. Any student refusing to comply with the Policy will be subject to discipline.

rights of free speech, due process, and equal protections have been raised during discussions. While a formal legal opinion is being prepared that will detail the specific cases considered and their application to the Policy, this memorandum will provide you with the opinion of the Department of Law.

There are no cases from Tennessee addressing the issue of a uniform attire policy for a public school system. Therefore, the Department of Law has reviewed school uniform cases from other jurisdictions as well as the current law on Free Speech, Free Expression, Due Process, and Equal Protection from the U.S. Supreme Court, the Federal Circuit Courts, and Tennessee courts including the Sixth Circuit Court of Appeals, the circuit court that hears cases from Tennessee. Based upon our research and these cases, it is the opinion of the Department of Law that a court is likely to determine:

- The Policy furthers an important and substantial government interest and is not related to the suppression of student expression. The restrictions are no more than are necessary to further that interest.
- The Policy does not violate the Free Speech provisions of the United States Constitution or the Tennessee Constitution.
- The Policy does not violate a constitutionally protected fundamental right of parents.
- The Policy provides procedural due process in the handling of discipline.
- The Policy is gender and race neutral and does not violate any substantive due process right of students.

Based on the cases that have been decided to date across the United States, it is the opinion of the Department of Law that the following issues may cause a court to rule certain provisions invalid:

- The Policy includes an exception for religious attire, medical needs, or special educational needs<sup>3</sup>. The Policy is not clear on the criteria that will be used by school officials to grant or deny use of these exceptions.

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<sup>3</sup> The Department of Law recommends that the language “special educational needs” be clarified by replacing it with “disability requiring special clothing.” (Not all special education students need Policy exemptions. Not all disabled students are special education students.)

Guidelines should be promulgated in order to assure that school officials are not left with unfettered discretion.<sup>4</sup>

- The Policy includes an exception for students wearing the uniforms of nationally recognized student organizations on days specified by the organization and approved by the school.<sup>5</sup> The exemption could be challenged as allowing officials to favor one viewpoint or organization over another.<sup>6</sup>
- Some terms may be considered vague or overly broad (i.e., “oversized” and “appropriate”). Clarifying these terms will allow a better understanding of acceptable attire and remove the potential for a legal challenge based on vagueness or overbreadth principals.

Please let us know if you have specific questions not addressed in this memorandum or would like any assistance from the Department of Law with any revisions you may choose to make to the Policy.

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<sup>4</sup> It is essential to have an exemption for bona fide religious beliefs and medical needs to comply with Federal anti-discrimination statutes, such as Title VI of the Civil Rights Act. 42 U.S.C. §2000d et seq.

<sup>5</sup> Organizations that are listed as examples are: JROTC, Girl Scouts and Boy Scouts.

<sup>6</sup> The exemption afforded to the Junior Reserve Officer Training Corps (“JROTC”), in particular, is should not be a problem. JROTC is a program that is part of the school curriculum, meets during the school day on school grounds, and for which its participants receive academic credit.