

February 12, 2019

Sharon Dixon Gentry
Board Chair
Attention: Board Members
Metropolitan Nashville Board of Public Education
2601 Bransford Avenue
Nashville, TN 37204

Re: MNPS: Review of Policies and Procedures Report and Recommendations
ATTORNEY-CLIENT PRIVILEGED DOCUMENT

Dear Board Members:

We would like to thank you for entrusting us to review the Metropolitan Nashville Public Schools ("MNPS" or the "District") Policies, Procedures and Practices regarding Title VI, Title VII and Title IX claims and investigations as well as other legal matters that are unique to educational institutions such as MNPS. During the course of our review, we examined all current Board policies relating to employment issues as well as a random selection of investigatory files representing investigations conducted by the MNPS Human Resources Department that took place over the last several years. As requested, we also met with and interviewed over forty (40) stakeholders within MNPS.

I. Privilege Issues

What follows is our report and recommendations related to the issues identified in the Request for Proposal. As requested, we have delivered our report and recommendations to you in an attorney-client privileged document. We would like to point out that the Board of Education specifically requested this communication be sent as an attorney-client privileged document; therefore, the Board of Education would need to vote to waive any privilege to this document. No individual Board of Education member should release or discuss the contents of this documentation to anyone without a formal Board of Education vote waiving the attorney-client privilege. However, realizing that this is outside our engagement in this matter, we would defer to your legal counsel's advice regarding the privilege issue. Nonetheless, we would underscore the need for thoughtful deliberation and discussion before waiving the privilege, should you choose to do so, as it could waive all privilege associated with our review.

II. Analysis of Current Employment Related Policies

Our initial review of this matter began with a detailed review of the Board's current employment-related policies. We compared the Board's current policies with others that we have drafted in the past as well as the model policies provided to boards of education by the Tennessee School Boards Association. We concluded that MNPS's policies reflect best practices in the industry and are generally up-to-date. Of course, the Board of Education has routinely modified its policies to reflect the distinctive nature of its school system. Based upon our review, the Board of Education routinely examines and modifies its policies to conform to changing legal requirements and the needs of MNPS. Therefore, we do not believe a change in current policies and practices with regard to the development and revisions is required at this time.

Upon completion of our review of the policies, we next turned to a detailed review of past investigations of employment-related issues that were completed by MNPS Human Resources staff over the past several years.

A. Review of Past Investigations

Our review of past investigations brought to light several areas that can be improved upon in order to streamline and bring consistency to the investigative process. Our review revealed that there is virtually no consistency in the way investigations are completed by individual investigators within MNPS. Specifically, some of the investigations used District-created intake referral forms, investigative summary forms, and investigation questions forms. However, other investigations did not utilize these documents at all. In order to maintain consistency going forward, we recommend that these forms be used as a framework for investigations completed by MNPS staff. We acknowledge that not all investigations can proceed in the same manner. With that in mind, we recommend that these documents be used as guidance rather than as rigid directives for investigators. For example, investigators should always be free to formulate their own questions related to the specific fact patterns and allegations during an investigation.

1. Inconsistency Among Investigators

There was also vast inconsistency in the way each investigator took notes and documented things for the file during investigations. We saw several investigations where the investigator included handwritten notes that were neither signed nor dated and it was very difficult, if not impossible, to determine who authored those notes and when they were created. This is particularly concerning as many times the person who completed an investigation either retired or is no longer employed by MNPS. It is very difficult to authenticate the documents once a person has left. The failure to date and sign documents was also evident in statements and other handwritten or typed documentation received by the investigators from witnesses or complainants. We recommend that, going forward, these documents should be signed and dated

so that the date the document was created and the author can be readily identified. Moreover, legible notes are critical and the importance of this cannot be overstated. We recommend that all investigatory notes be type-written going forward. Without clear documentation that identifies the author and the date the document is created, it is nearly impossible to support the conclusions and findings of any investigation, which can be devastating during litigation.

Several of the investigatory files contained post-it notes that included information and were placed in various places in the file. These are notorious for being either lost or placed on the wrong document, which makes it very difficult to determine the source of the notes. It also poses a great risk of accidental release of private or confidential information. We recommend that all persons responsible for investigations be prohibited from using post-it notes going forward. We also recommend that the District conduct periodic audits of investigatory files to confirm compliance with these recommendations.

2. Need for Consistency in Investigatory Files

With regard to consistency, we would recommend that all of the investigatory files be organized in the same manner going forward. Several of the investigatory files contained documents that were placed in the file in no apparent order or sequence and it was difficult to follow the investigator's logic and conclusions. It should be very easy for someone reviewing an investigatory file to determine the basis for the conclusions and to review all of the relevant documents without having to search for them. In the event a governmental agency, such as the Equal Employment Opportunity Commission, is required to review an investigatory file as part of a complaint against MNPS and/or one of its employees, the files should be professionally maintained, coherent and easy to read and follow.

B. Investigations of Certificated Employees

In reviewing the investigatory files, there were several instances where certificated employees of MNPS were investigated for breaches of policy and/or procedure. During the pendency of the investigation, it appears that the certificated employees were placed on administrative leave with pay. Tennessee Code Annotated allows for the suspension of a certificated employee pending an investigation of an allegation against him or her. Specifically, Tennessee Code Annotated § 49-5-511(a)(3) states that:

A director of schools may suspend a teacher at any time that may seem necessary pending an investigation or final disposition heard before the board or an appeal. If the matter under investigation is not the subject of an ongoing criminal investigation or department of children's services investigation, and if no charges have been made pursuant to subdivision (a)(4), a suspension pending investigation shall not exceed (90) days in duration. If vindicated or reinstated the teacher shall be paid the full salary for the period during which the teacher was suspended.

The District's practice at this time is to place teachers or other certificated employees on administrative leave with pay during the pendency of an investigation. However, there are consequences to providing leave with pay.

1. Unintended Consequences of Placing a Certificated Employee on Administrative Leave With Pay

Based on our review, this procedure appears to have caused several unintended issues and confusion. Specifically, several teachers and other certificated employees were placed on administrative leave with pay for a period of months while an investigation took place. For example, in at least one case a teacher was placed on administrative leave for a period in excess of six months only to receive a suspension of three days. During this time, the teacher left Nashville while on administrative leave and it was almost impossible for the MNPS to make contact with the teacher to advise him of his three day suspension as a result of the investigation. In essence, this employee received a paid vacation in excess of six months.

We recommend that, going forward, MNPS adopt the practice of suspending teachers and other certificated employees without pay during the pendency of any investigation pursuant to Tennessee Code Annotated § 49-5-511(a)(3). If the teacher or certificated employee is later cleared of all allegations, he or she should be paid their full salary for the time of the suspension pursuant to the same statutory provision. Should the District decide not to follow this recommendation, we would recommend that administrative leave be used only for short periods of time, not to exceed three days. If an investigation takes longer than the time allotted for administrative leave, the employee should be suspended without pay pending the results of the investigation.

2. Reporting Suspensions

When a certificated employee is placed on administrative leave, suspended, or is recommended for charges of dismissal, the director of schools should immediately report to the Tennessee Office of Teacher Licensure the action and the reasons for the same as set forth on the Director's Initial Report form provided by the Tennessee Department of Education. Likewise, when the final action is taken against a certificated employee, a Director's Final Report should be completed and reported to the Tennessee Department of Education immediately. This is an absolute requirement pursuant to Tennessee Board of Education Rules and Regulations. Because administrative leave is perceived as non-punitive in nature, several investigations revealed that required reporting was not made or was delayed pending final action on the certificated employee's investigation. It is our understanding that the Tennessee State Board of Education has taken issue with this stance and requires a timely report any time someone is placed on administrative leave. Regarding our recommendation above, if the District adopts our recommendation to suspend without pay rather than place a certificated employee on administrative leave, this would alleviate this concern. Based on our experience representing several school systems across the state, placing certificated employees on suspension during the

pendency of an investigation would mirror the best practices of the majority of school systems in the state. MNPS's decision to allow for administrative leave with pay during the pendency of an investigation is an outlier among school boards.

3. **Miscellaneous Identified Issues and Recommendations Related to Investigations**

a. **Individualized Education Programs ("IEP") and Individuals with Disabilities Education Act ("IDEA")**

During our review of investigatory files, there were several miscellaneous issues that we identified related to the investigations. Specifically, it is clear from our review that during several of the investigations, issues were either brought up or identified during questioning that should have led the investigator to pursue additional questions or concerns. For example, there were several situations that involved either children with Individualized Education Programs ("IEP") or other matters subject to the Individuals with Disabilities Education Act ("IDEA"), which should have been explored further. In those instances where the IDEA is identified as an issue or a student's IEP is at issue, the investigator should notify District's Special Education personnel about the same. Further, the investigator needs to be very careful not to disclose education records and/or status of students under an IEP to persons who have no educational need for that information.

b. **Americans with Disabilities Act and Family Medical Leave Act**

Another example apparent from our review revolved around information related to protected classes including employees who have disabilities and are protected under the Americans with Disabilities Act ("ADA") and/or who were eligible for Family Medical Leave Act ("FMLA") benefits. When these issues become evident to an investigator, he or she should know to consult with their supervisor and the Human Resources department to determine whether additional attention is needed regarding these issues.

c. **Training Needed for Those Tasked with Completing Investigations**

During the course of our review it was apparent that many of the people who were tasked with completing investigations had little or no formal training on how to conduct a thorough and professional investigation. Our recommendation in this area is that MNPS should provide mandatory annual investigation training for all persons who could be tasked with conducting an investigation within MNPS. This training needs to be focused on the mechanics of an effective and professional investigation as well as the necessity of reporting to governmental agencies such as the Tennessee Office of Teacher Licensure and the Department of Children's Services and/or local law enforcement. Investigations are complex and require skilled and experienced investigators. We recommend that this training occur at least semi-annually to ensure that the turnover in staff does not affect the quality of the District's investigations.

III. Information Gathered from Interviews of More Than Forty (40) MNPS Stakeholders

A. Overview

The remainder of this Report will focus on the information we obtained after conducting interviews of more than 40 stakeholders at MNPS. The information that we gleaned from these interviews highlighted the investigation issues as discussed above. However, these interviews also brought to light a re-occurring theme about the stakeholders' perception as a whole. The stakeholders communicated to us that while the policies and procedures revolving around the Human Resources Department could be effective, implementation of the policies and procedures is lacking. At the outset, we feel that it is important to note that during all the interviews we conducted, there was a clear and nearly unanimous expression of over-arching concern regarding a lack of communication from the highest levels of administration to principals and other supervisors. These concerns exist both in the Central Office and at the various high schools, middle schools, and elementary schools. In fact, based on our discussions with district stakeholders, it is evident that the morale of all employees, throughout MNPS, is very low. We cannot over-emphasize the consistency of this concern among employees. This stems from a perceived, if not actual, lack of communication regarding standards, procedures, and expectations from the Administration. While this low morale does not relate only to human resources practices and procedures, a majority of the consternation felt by MNPS employees revolves around talent acquisition and the hiring process, which is marshalled by the Human Resources Department. Almost all of principals and community superintendents expressed severe and validated concerns regarding the hiring process and the lack of communication by the Human Resources Department.

B. Issues and Concerns with the Hiring Process

Most of the principals and community superintendents have been long-term MNPS employees and expressed that under the new administration, the hiring process has been complicated to the point that well-qualified teacher applicants do not take jobs with MNPS because of delays caused by the Human Resources Department. Some of these concerns revolve around the interview and hiring process itself. Other concerns revolve around the onboarding process. The principals we spoke with expressed that, while they are responsible for interviewing prospective employees, their hiring recommendation is sometimes not acted upon for many days. Further, the principals expressed that none of the applicants are pre-screened which has resulted in several occasions where a prospective employee does not have the requisite license to fill the position for which he or she has applied. All of those interviewed regarding this concern indicated that, prior to the current administration, this type of pre-screening occurred before prospective names were delivered to principals for interview.

1. Inability to Hire Qualified Teachers

Principals stated that at times it took much longer than appropriate for their hiring recommendations to be acted upon. These situations were not limited to any quadrant or principal. All the principals and most of the community superintendents expressed this same concern. The principals and community superintendents described situations where a principal made a recommendation to hire a prospective employee to the Human Resources Department, but no offer was made for several days and sometimes weeks. In the meantime, the prospective employee accepted a job with another school system despite the fact that an offer by the MNPS principal was intended to go out earlier. This issue was exacerbated in areas where it is very difficult to find qualified applicants, such as science, foreign language and special education. The principals expressed that these positions were exceedingly difficult to fill, there were very few applicants, and that the situation was further compounded by the lack of timely action on their hiring recommendations.

2. Incompatible Data Systems Prevent Timely Hiring

Most principals and community superintendents further expressed that they were operating on less than a full complement of qualified and licensed teachers at the schools for which they are responsible. Upon our review of the policies and practices, it appeared that this confusion relates, in part, to several databases that are used by MNPS that are currently incompatible. This means that an applicant's information may need to be entered into up to three separate databases in order to finalize an offer of employment. Whenever this many processes require duplication due to incompatible software, material errors and omissions will occur. It is inevitable.

3. Lack of Staffing in Summer Months Contributes to Issues of Onboarding and Hiring

Further, the majority of the hiring takes place over the summer months and at that time there are only two people in the Human Resources Department who are responsible for this task. This lack of staffing creates a mammoth backlog with regard to offers and onboarding of employees. While some of this can be attributed to the time it takes to do a background check and finalize an application process, as noted above, it appears that the majority of the backlog is related to the lack of proper allocation of duties and responsibilities within the Human Resources Department. Rather than assigning other current employees to help with these tasks, it was decided that only two employees would be responsible. Despite the backlog that was created by this decision, at least one of the employees responsible was allowed to take a substantial vacation during this period without any coverage provided by the supervisors. Simply put, inadequate staffing creates an untenable situation for principals and community superintendents.

4. Recommendations For The Hiring and Onboarding Processes

It is our recommendation that the District allocate funds for a database which would allow for the entry of prospective employee information in one data base rather than using three separate databases. Further, we would also recommend that the District allocate more personnel during the summer months for the hiring process. During the summer months, classes are not in session and should be more than sufficient personnel to cross-train and use for this purpose, thereby eliminating the backlog. We do not recommend hiring more personnel to complete these tasks but only the re-allocation of current personnel to reduce the backlog and allow for coverage during vacations and unexpected absences.

Concerns were also expressed around the institution of a procedure within the District that provided for new employee orientation to occur only on Friday of each week. The principals and community superintendents adamantly expressed that it was very important, especially during the course of a school year, to place a teacher in the classroom as soon as possible. Currently, the District procedure only allows a teacher to enter the school and begin work after orientation is complete. This procedure results in situations where a teacher would be approved to begin work on a Monday, but would have to wait an entire week to start work. We recommend that orientation be held on more regular and flexible intervals in order to have new teachers report to the classroom as soon as possible.

B. Lack of Communication

1. Overview

The stakeholders also expressed severe concerns regarding a lack of communication between MNPS supervisors and the Human Resources Department, with the community superintendents, principals, and other administrative staff. This communication issue relates not only to policies and procedures regarding employment actions such as discipline and termination, but also regarding day-to-day practices regarding students and employees. The stakeholders we interviewed indicated that there were several meetings to discuss these issues; however, they believe no resolution has been forthcoming to date. Flatly put, most stakeholders expressed that while meetings happened, nothing ever changed and there was no affirmative direction given and/or resolution by the Human Resources Department or the Administration related to these issues. We believe this type of failed communication led to the concerns identified in the RFP, much of which can be avoided through clear and definitive messaging to stakeholders.

2. Example of Failure to Communicate by the Office of Superintendent

The stakeholders, including principals and community superintendents, gave one example of a communication problem related to the office of superintendent. We received

reports that on at least one occasion, several principals asked for a meeting to discuss concerns regarding communication and hiring issues.

After several requests, the meeting was scheduled. During the meeting, the principals stated that Dr. Joseph was concerned about the confidentiality of the meeting and asked all present to turn off their cell phones and other electronic devices. The principals asked to approach this meeting with Dr. Joseph as an advisory committee and asked Dr. Joseph to address their concerns and consider their suggestions, which they had typewritten. However, they consistently allege that Dr. Joseph refused to accept the copy of the typewritten notes and asked that they all be destroyed at the end of the meeting.

The principals stated that no resolution was reached and it did not appear to those present that Dr. Joseph considered the concerns that were presented. Whether or not Dr. Joseph had, in fact, considered those concerns, the stakeholders stated that this meeting was demoralizing and the Administration was dismissive to the stakeholders present, who have many years of experience in the system. In fact, it was expressed that the morale amongst these principals was as low as they could ever remember.¹

3. Implementation of an Advisory Committee

We use the above-referenced example to illustrate the type of lack of communication and concern shown to stakeholders down the chain of command, which was voiced to us during our interviews. We recommend that a communication protocol and process be implemented immediately giving a voice to all stakeholders in the system. Specifically, we recommend the District discuss and implement an advisory committee that could bring these concerns directly to the Administration at the highest level. We would recommend that this communication and discussion be facilitated by a third party that could focus the group and help reach consensus on issues that are concerning to both the Administration and the stakeholders. It is our opinion, based on the information we received from stakeholders, that if these issues regarding communication are not resolved, it will be difficult, if not impossible, for the District to retain qualified and exemplary employees.

4. Deviation from Pay Scale

Another over-riding concern we heard during our interviews related directly to certain discretionary and unsupported variances from the pay scale that is published² and provided to employees in the District. For example, several principals indicated that while they were at the very top of the pay scale for principals based on their education and experience, there were other principals with less experience and less education whose salary was higher than that provided by

¹ While we do not express an opinion as to whether or not these types of concerns or suggestions are valid, we requested, but were not given copies of the concerns presented by the principals as they were told to destroy them.

² The pay scale is posted on the MNPS website at <https://www.mnps.org/salary-schedules>.

the same pay scale. While our scope of representation did not require a complete audit of all district employees with regard to the pay scale, we recommend that the District immediately conduct a complete audit to determine if there are outliers who are being paid more than the pay scale or if there are persons who are being paid less than their pay scale demands. Should the audit reveal such discrepancies, all salaries should be brought into compliance with the pay scale as published by MNPS. To do otherwise, would be unconscionable, and may implicate other laws such as Title VII and Title VI.

5. **Additional Training for or Dismissal of Executive Director of Human Resources – Talent Strategy**

Finally, when asked about the issues regarding the Human Resources Department and its interaction with the MNPS employees, without exception, those stakeholders interviewed, who were not a part of the Human Resources Department, expressed to us that the Executive Director of Human Resources – Talent Strategy at MNPS is extremely divisive, dismissive, and, in their belief, incompetent. Again, this opinion, of the interviewed stakeholders, represents the consensus of all of those whom we interviewed, outside of the Human Resources Department. This employee's background is not in the education arena, and the employee's training and communication with subordinates is ineffective. With such a consistent alarm about this individual, we believe MNPS would be remiss if it fails to address this matter. Reluctantly, and with consideration and due respect for this person, to cure the lack of morale, feeling of helplessness and lack of communication, we would recommend that Dr. Joseph either terminate this employee or send this employee for further training to ensure that the employee's communication skills and ability to work well with others improves. This could also be accomplished through reassignment.

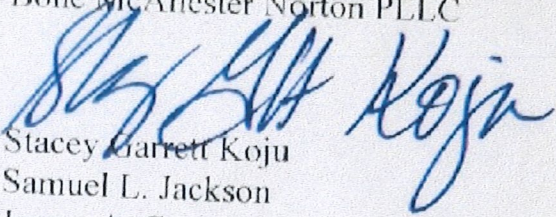
IV. **Conclusion**

This concludes our Report and Recommendations related to policies, procedures and general status of the Human Resources Department at MNPS. We would like to note that while we have been tasked with a review to determine areas that need improvement, at no time during our review of policies and procedures and our interview of more than forty (40) stakeholders did we identify any intentionally negative or problematic conduct by employees. We note that several of the policies and procedures have changed with the new administration as is customary. However, those changes in procedures and policies were not always communicated directly and effectively to everyone in MNPS.

Thank you for retaining us to perform this service for MNPS. We will be available to answer questions related to this Report and Recommendations; however, to maintain attorney-client privilege regarding these issues, we would request that those having questions related to the Report and Recommendations contact the Board's counsel to discuss those implications prior to contacting us.

Sincerely,

Bone McAllester Norton PLLC


Stacey Garrett Koju
Samuel L. Jackson
James A. Crumlin, Jr.

SLJ:ckr

cc: Corey Harkey, Assistant Metropolitan Attorney

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