UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

St. Joan Antida High School, Inc.

Plaintiff,

v. Case No. 17-CV-413

Milwaukee Public School District

Defendant.

DEFENDANT'S REPLY BRIEF IN SUPPORT OF
DEFANDANT'S MOTION FOR SUMMARY JUDGMENT

ARGUMENT

I. MPS has not violated SJA's or its pupils' Fourteenth Amendment Right to Equal Protection.

A. This case is a "class of one" case.

SJA asserts that this is not a "class of one" case because SJA alleges that the classifications at issue are in MPS's pupil transportation policy and, therefore, this is a "legislative classification" case. (Pl. Response Brief, p. 6). To support its position, SJA correctly summarizes the legislative classification framework as follows:

> But a classification claim is different. The government itself has *already identified two groups* and has expressly decided to treat them differently. The legal issue in legislative classification cases [] is whether the government is justified in making the classification.

(Pl. Response Brief, p. 7-8) (emphasis in original). Here, MPS has not identified the two groups at issue. In essence, SJA is alleging MPS's transportation policy has a discriminatory impact on pupils of private high schools with an attendance area that

encompasses the entire City of Milwaukee (which it terms "private city-wide high schools"), which is precisely what a "class of one" claim is.

Nowhere in MPS's pupil transportation policy is there a "private city-wide high school" classification. MPS's transportation policy classifies "private high schools," and all pupils of private high schools are treated exactly the same under MPS's policy. (Rule 4.04(2)(b)2.).[1] Similarly, all pupils attending private high schools (all attendance area schools) are treated exactly the same as all pupils attending their designated MPS attendance area high school. (Rule 4.04(2)(a)3. & 2(b)2.). Instead, SJA is challenging the policy's impact on a subset of the "private high school" classification. Thus, this case is a "class of one" case because SJA complains of disparate treatment of the class it created and not of a class in MPS's transportation policy.[2]

SJA argues that *Plyler v. Doe* shows that the instant case is a legislative classification case. (Pl. Response Brief, p. 8). But, *Plyler* concerned a statute that expressly withheld state funds for the education of children who were not legally admitted to the United States. *Plyler v. Doe*, 457 U.S. 202, 205 (1982). Thus, the classification (an invidious classification) was plainly made within the legislation and the Court applied the "legislative classification" analysis. Here, again, MPS is not making the "private city-wide high school" classification, it is SJA that is doing so. Therefore, this Court should apply the "class of one" analysis to this case.[3]

[1] Throughout this brief, "Rule 4.04" shall refer to MPS Administrative Policy 4.04 (attached to Plaintiff's Complaint as Exhibit A).
[2] Likewise, the statute at issue, Wis. Stat. § 121.54, does not have the "private city-wide high school" class that SJA is concerned with. The statute merely classifies pupils of private and public schools. SJA has created its own class, which is a subset of this larger "private school pupil" group.
[3] SJA also asserts that this is not a "class of one" claim because it has expressly said so. (Pl. Response Brief, p. 6). But, this Court applies the appropriate standard and not what the plaintiff claims is correct.

Contrary to SJA's repeated assertions, this case is analogous to the *Racine Charter One* case. *See Racine Charter One v. Racine Unified School District*, 588 F.3d 940 (7th Cir. 2009). There, Charter One charter school was challenging the Racine Unified School District's (RUSD) transportation policy because Charter One's pupils were not receiving the busing benefit but public and private school pupils were. *Id*. at 678. There is no question that the application of RUSD's transportation policy placed Charter One in a "disfavored group," but RUSD's transportation policy did not expressly deny the transportation benefit to the charter school – that is to say, the policy did not expressly classify "charter schools" within the policy. *See Id*. at 679 ("RUSD's written transportation policy closely tracks the requirements of Section 121.54," and Wis. Stat. § 121.54 does not contain a "charter school" classification.) Thus, the court applied the "class of one" analysis to the case because there was no express legislative classification of the "disfavored group." This is similar to the instant case where MPS does not classify "private city-wide high schools" because they are part of the "private high school" classification. Because SJA is creating its own class with which to attack MPS's pupil transportation policy, it is making a "class of one" claim.[4]

SJA has advanced no legitimate argument to support a finding that the two groups at issue are "similarly situated" for purposes of a "class of one" claim.[5] In fact, SJA even seems to suggest that the two groups are clearly dissimilar where it states, "Everyone understands that the two groups are different in legislative classification cases, but the

[4] The size of the class is immaterial in a class of one case as well. *See, e.g., Racine Charter One*, 588 F.3d at 680 (quoting *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 n. * (2000)) ("Whether the complaint alleges a class of one or of [more] is of no consequence because we conclude that the number of individuals in a class is immaterial for equal protection analysis.").

[5] SJA repeatedly declares the two groups at issue "similarly situated" based on SJA's hypotheticals, (*See* Pl. Response Brief, p. 12), and SJA's parallel universes. (*See id*. at 17). But, this Court deals in facts and the law, and, therefore, this Court should ignore SJA's hypotheticals.

question is whether the differences provide a compelling justification for treating them differently. Here, there is no legally acceptable justification." (Pl. Reply Brief, p. 5).[6] Thus, if the "class of one" standard is applied, SJA essentially acknowledges that it loses the "similarly situated" argument.

B. MPS's pupil transportation policy does not violate a fundamental right of SJA's pupils.

SJA alleges that MPS's refusal to provide transportation services to SJA's pupils impinges on a fundamental right by interfering with the freedom of parents to choose a private education. (Pl. Response Brief, p. 9) (citing *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510 (1925)). But, SJA fails to show how pupil transportation is a necessary component of a private education. SJA points to no law[7] or facts on the record to show that pupil transportation is a prerequisite to education and, therefore, has failed to establish a chain of causation that would warrant *Pierce* strict scrutiny. *See, e.g., Griffin High School v. Illinois High School Ass'n*, 822 F.2d 671, 675 (7th Cir. 1987) (Declining to extend *Pierce* strict scrutiny to state athletic association's by-law provision allowing a transferring student to be eligible for athletics only if the transfer is from private to public schools because plaintiff's "chain of causation is too attenuated and speculative to support the conclusion that the new transfer policy unreasonably interferes with the freedom of parents to direct their children's upbringing."). Additionally, SJA fails to show any actual interference with the pupils'

[6] While this argument lies within SJA's reply brief in support of its Motion for Summary Judgment, SJA asserts that MPS has an obligation to address in its briefs supporting its own Motion for Summary Judgment those arguments SJA raises in support of its Motion for Summary Judgment. (Pl. Response Brief, p. 9 n.4).

[7] As is a trend for SJA, it does point to Wisconsin's pupil transportation statute, Wis. Stat. § 121.54, and declares that MPS must provide transportation to SJA's pupils. But this is misguided for two reasons: (1) it is stating as fact the answer to a legal question that this Court is tasked with answering, and (2), SJA still fails to show that the statute makes pupil transportation a prerequisite to education and therefore interferes with a parent's right to choose.

access to education. *See, e.g., Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 458 (1988) (Rejecting the argument that a school district charging a user fee for bus service was unconstitutional because it "deprives those who cannot afford to pay it of 'minimum access to education,'" especially where the plaintiff-student "continued to attend school during the time that she was denied access to the school bus."). The instant matter is a "class of one" case that applies the rational basis review.

C. The difference between attendance area schools and non-attendance area schools alone shows that the two groups at issue are not similarly situated.

Despite claiming that this is not a "class of one" case, SJA then dives into why the two groups at issue are similarly situated based on attendance areas. SJA alleges that MPS has engaged in an exercise in obfuscation in its discussion of attendance area schools versus non-attendance area schools, (Pl. Reply Brief, p. ¶ 6), but then SJA launches into its own exercise in obfuscation.

First, SJA tries to distinguish between terms: "attendance area" for private schools, Wis. Stat. § 121.51(1), "attendance district" for MPS schools, Wis. Stat. § 119.16(2), and its self-created "attendance zone" for both. (Pl. Response Brief, p. 15). "What's in a name? [T]hat which we call a rose [b]y any other word would smell as sweet."[8] MPS agrees with Shakespeare's conclusion, as does SJA, apparently, as it ultimately lands on using "attendance area" for both public and private schools.[9] But, SJA then tries to redefine "attendance area" by proclaiming that "'[a]ttendance area,' as a matter of common sense, simply means the geographic area in which a student must live to qualify for transportation," and that under that definition, "all of the MPS schools

[8] William Shakespeare, *Romeo and Juliet*.
[9] A point from which both parties started, (PPFF ¶¶ 5 & 13; DPFF ¶¶ 7-8).

have an attendance area." (Pl. Response Brief, p. 15). But, just as Ivanka Trump cannot redefine "complicit," SJA cannot redefine "attendance area."

In Wisconsin, "attendance area" is the geographical area established by a school's governing body for the purpose of designating the area from which its pupils attend, and that definition applies to private schools, Wis. Stat. § 121.54(1), as well as public schools. Wis. Stat. §§ 119.16(2) & 121.845(1); *see also State ex rel. Vanko v. Kahl*, 52 Wis.2d 206, 215 (1971) (discussing the history of Wisconsin attendance areas and the private school attendance area statute and finding that "it is clear that the intent, effect and result is to establish an area or proximity basis as the general rule for determining *which schools pupils are to be assigned to, public, private or parochial*") (emphasis added).

SJA's obfuscation is even more apparent given the undisputed facts on the record. It is undisputed that SJA has an attendance area. (PPFF ¶ 5; DPFF ¶ 7).[10] It is also undisputed that MPS has a group of attendance area high schools. (PPFF ¶ 13; DPFF ¶ 8). It is further undisputed that MPS has non-attendance area Citywide Specialty high schools. (PPFF ¶ 14; DPFF ¶ 9). SJA wants this Court to ignore the undisputed fact that MPS Citywide Specialty high schools are non-attendance area schools and to suddenly declare that all MPS schools have an attendance area based on its new definition of "attendance area" that has no roots in Wisconsin Statutes or in case law. As such, this Court should ignore SJA's arguments regarding attendance areas.

SJA also argues that MPS's corporate designee has already acknowledged that the attendance area versus non-attendance area argument is wrong because he testified that for transportation purposes there is no practical difference between a public school with

[10] Throughout this brief, "PPFF" shall refer to Plaintiff's Proposed Findings of Fact as well as MPS's responses thereto. "DPFF" shall refer to Defendant's Proposed Findings of Fact, which are uncontroverted.

no attendance area and a private school with a city-wide attendance area. (Pl. Response Brief, p. 15). SJA then concludes that "by admission of MPS' own corporate designee, SJA and its students are similarly situated to MPS city-wide high schools and their students." (*Id*. at 16). Aside from erroneously using a layperson's opinion to reach a legal conclusion this Court is tasked with deciding, SJA also misstates the position of MPS's corporate designee who clearly stated in the quoted text that "they're not the same kinds of schools." (*Id*.; Solik-Fifarek Dep., p. 46, lines 1-2). Thus, SJA's reliance on this particular piece of deposition testimony does not advance its argument that the two groups at issue here are similarly situated. Because SJA advances no other argument to show the two groups at issue to be similarly situated, this Court should find that the two groups are not similarly situated and dismiss SJA's Equal Protection Claim.

D. Assuming *arguendo* that this is not a "class of one" case (or that the two groups at issue are similarly situated), SJA still does not negate every rational basis for the difference in treatment.

"Unless a statute provokes 'strict judicial scrutiny' because it interferes with a 'fundamental right' or discriminates against a 'suspect class,' it will ordinarily survive an equal protection attack so long as the challenged classification is rationally related to a legitimate governmental purpose." *Kadrmas*, 487 U.S. at 457-58.

> The Fourteenth Amendment's promise that no person shall be denied the equal protection of the laws must coexist with the practical necessity that most legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons. We have attempted to reconcile the principle with the reality by stating that, if a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end.

Romer v. Evans, 517 U.S. 620, 631 (1996) (internal citations omitted).

MPS provided many legitimate governmental interests for why its pupil transportation policy makes the distinction concerning MPS Citywide Specialty high schools, primarily centered on the fact that MPS has many educational challenges and requirements that require MPS to make that classification. As stated in Defendant's Brief in Support, in situations where MPS cannot provide the appropriate level of education (or any education in situations of overcrowding) at the pupil's designated attendance area high school, MPS has expanded its transportation services to those pupils who need to attend either another attendance area high school or an MPS Citywide Specialty high school.

It is undisputed that MPS Citywide Specialty high schools do not have attendance areas primarily because they offer special programs to the entire district that are not available in all attendance areas. (DPFF ¶ 9). MPS cannot provide these special programs in all of its schools because there are limited qualified teachers available to teach these special programs, (DPFF ¶ 13), and there are limited resources available to MPS to provide these special programs in all 159 of its schools. (DPFF ¶ 14). Additionally, MPS has statutory educational requirements, such as the requirement to ensure that "all gifted and talented pupils enrolled in the school district have access to a program for gifted and talented pupils," Wis. Stat. § 118.35(3), which MPS meets through its Citywide Specialty high schools that are open to the entire district.

"SJA does not dispute that MPS city-wide high schools provide programs that its Neighborhood Schools do not." (Pl. Response Brief, p. 21). SJA argues that MPS's educational challenges and requirements for establishing Citywide Specialty high schools do not provide a rational basis for the distinction in transportation services (repeatedly

asking "so what?" in its Response Brief). Essentially, SJA thinks that MPS's educational requirements and challenges are mutually exclusive of pupil transportation. The irony in this argument is that SJA earlier argued that pupil transportation and education are so intertwined that MPS's denial to provide transportation to SJA's pupils amounted to interfering with their parents' right to control over their children in choosing private education (and warranted *Pierce* strict scrutiny). But now, SJA wants this Court to find that MPS's educational requirements and challenges should not have any bearing on deciding whether MPS has even a rational basis for the transportation classification.[11]

Again, in Wisconsin, the general expectation is that a pupil has a right to attend his or her designated attendance area school. The Wisconsin Supreme Court discussed the importance of attendance areas as follows:

> The attendance area concept is no newcomer to the educational scene in Wisconsin. Long before transportation to schools, public or private, was provided at public expense, the approach of area-based public school districts was the rule. One of the statutory responsibilities of local public school boards involved the often troublesome and frequently controversial assignment of establishing school attendance district lines and boundaries. *Exceptions were made by reason of overcrowding of particular schools or individual or special situations, but proximity was the measuring stick used.* While parents and school administrators often disagreed as to what the attendance area boundaries ought to be, there was acceptance of the general neighborhood school approach that *sought to assign pupils to the nearest available public school*. Before bussing at public expense came along, cold winters alone made eminently reasonable minimizing the time and distance involved in walking to and from school, elementary or high school.

Vanko, 52 Wis.2d at 210-211 (emphasis added). The court continued:

> The coming of the automobile, the merger of school districts, expanded parental expectations, greater concern for health and safety of school children, and other factors combined to bring about an expansion of home-

[11] The truth is somewhere in the middle. Meeting educational requirements and overcoming educational challenges can provide a rational basis for the distinction in MPS's pupil transportation policy, but, certainly, there is nothing to suggest that pupil transportation is a prerequisite to education.

> to-school and back again bussing at public expense of public school pupils. […] But the concept of an attendance area-based public school system continued, with exceptions made for reasons established and accepted as reasonable.

Id. at 211. It is under this framework that MPS has created its pupil transportation policy. Where a pupil needs to travel the extended distance to another attendance area high school or to a Citywide Specialty high school to obtain the appropriate education, MPS will expand its transportation services to try to minimize the impact of having to travel the extended distance.

SJA further argues that MPS has no rational basis for the classifications in its transportation policy because – SJA alleges – MPS must transport SJA's pupils under the "reasonable uniformity" requirement in state law and, therefore, MPS can have no rational basis for not providing transportation services to SJA's pupils. SJA repeats this argument as it attempts to negate the various legitimate governmental interests that MPS proffered in its Brief in Support. Thus, under SJA's analytical framework, this Court must first decide SJA's state law claim (in SJA's favor) before it can possibly find in SJA's favor on the Equal Protection claim. Without a finding in SJA's favor on the state law claim, the foundation for SJA's arguments challenging MPS's rational bases crumbles. MPS will confine its arguments on the state law claim to the appropriate section below, but suffice it to say that MPS disagrees with SJA that MPS must transport its pupils.

SJA also alleges that "MPS flunks the rational basis test" because of the decision in *Deutsch v. Teel*. (Pl. Response Brief, p. 11) (citing *Deutsch v. Teel*, 400 F. Supp. 598 (E.D. Wis. 1975)). MPS discussed this case at length in its response to SJA's Motion for Summary Judgment, but SJA continues to mischaracterize the holding in *Deutsch*.

Deutsch concerned the situation where MPS was providing transportation to all pupils of private and public elementary schools (who lived more than two miles from the school). *Deutsch*, 400 F. Supp. at 599. The plaintiffs had received the same busing benefit until their school moved to a location 400 feet outside the City limits. *Id*. The court found that there was no rational basis for not providing the same busing benefit all other private and public elementary school pupils (who lived more than two miles from the school) were receiving on the sole basis of the situs of the plaintiff's school now being 400 feet beyond the limits of the City of Milwaukee. *Id*. at 605. Here, the distinction is not the school's situs; rather, it is whether the pupil is attending his or her attendance area high school. Thus, *Deutsch* is not analogous to this case and this Court should not find, as SJA suggests, that it stands for the proposition that MPS can have no rational basis for distinctions in its pupil transportation policy.

SJA also challenges cost as a rational basis for MPS, relying largely on the *Plyler* decision that "rejected out of hand" Texas's argument about preserving the state's limited resources. (Pl. Response Brief, p. 22). But, *Plyler* was not applying a rational basis review. 457 U.S. at 230 ("If the State is to deny a discrete group of innocent children the free public education that it offers to other children residing within its borders, that denial must be justified by a showing that it furthers some *substantial* state interest.") (emphasis added).[12] Even the court in *Deutsch*, a case SJA frequently cites as controlling,

[12] SJA wants this Court to place great emphasis on the *Plyler* decision in its rational basis review of the instant case, but *Plyler* applied a heightened level of scrutiny to a very specific set of facts. *See Plyler*, 457 U.S. at 244 (Burger, C.J. dissenting) ("Yet by patching together bits and pieces of what might be termed quasi-suspect-class and quasi-fundamental-rights analysis, the Court spins out a theory custom-tailored to the facts of these cases. In the end, we are told little more than that the level of scrutiny employed to strike down the Texas law *applies only when illegal alien children are deprived of a public education*.") (emphasis added); *see also Kadrmas*, 487 U.S. at 459 ("In *Plyler*, which did not fit this pattern, the State of Texas had denied to the children of illegal aliens the free public education that it made available to other

acknowledged that cost can be a rational basis in social welfare programs. 400 F. Supp. at 604 ("The Court notes that it is clear that in some circumstances, fiscal or monetary considerations may support distinctions made by the state as to social welfare programs it may wish to promulgate."). Thus, this Court should not summarily dismiss cost being a rational basis as SJA urges this Court to do. Because SJA did not negate MPS's costs as a rational basis, this Court should find that cost is a rational basis as applied to MPS's pupil transportation policy.

II. MPS has not violated Wis. Stat. § 121.54 in its application of its pupil transportation policy.

First, SJA states that it has a right to seek a declaratory judgment pursuant to Wis. Stat. § 806.04; MPS acknowledges that SJA may seek a declaratory judgment. MPS further acknowledges that a court may issue an injunction as supplemental relief to a declaratory judgment "whenever necessary or proper." Wis. Stat. § 806.04(8). However, SJA noticed a claim for money damages in the amount of $108,200. (PPFF ¶ 74; McGrath Decl., Ex. I). SJA's complaint also seeks money damages in the same amount. (*See* Pl. Complaint). Thus, to the extent SJA seeks a claim for money damages for alleged violations of Wis. Stat. § 121.54, SJA has no private right of action on that claim.

As to the merits of the state law claim, pupil transportation services are governed by Wis. Stat. § 121.54. Under the "City Option" of the statute, MPS is not required to provide any pupil transportation. Wis. Stat. § 121.54(1)(c); (PPFF ¶ 8; DPFF ¶¶21-22). Under the "City Option," a school district may elect under Wis. Stat. § 121.54(2)(c) to provide pupil transportation. Wis. Stat. § 121.54(1)(b). "Transportation may be provided

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residents. Applying a heightened level of equal protection scrutiny, the Court concluded that the State had failed to show that its classification advanced a substantial state interest.").

for all *or some of the pupils* who reside in the school district…," Wis. Stat. § 121.54(2)(c) (emphasis added), so long as there is "reasonable uniformity in the transportation furnished to the pupils, whether they attend public or private schools." Wis. Stat. § 121.54(1)(b).

Here, MPS has elected to provide transportation services for some of the pupils who reside in the MPS district. For example, MPS provides transportation services to pupils attending their public or private attendance area elementary school so long as they live two or more miles from the school (the "one mile from a bus stop" rule is not applied to elementary grades). (Rule 4.04(2)(a)1. & (2)(b)1.). MPS has expanded transportation services for elementary grades because MPS has concerns about the safety and welfare of these younger children even on public transportation.

For high school grades, MPS will provide transportation services to pupils attending their public or private attendance area high school so long as they live two or more miles from the school and more than one mile from a public transportation (bus) stop. (Rule 4.04(2)(a)3. & (2)(b)2.). The result is that MPS generally does not provide transportation services to high school pupils attending their attendance area high school.[13] This is consistent with the City Option's exemption where there is public transportation. *See, e.g., St. John Vianney School v. Bd. of Educ. of School Dist. of Janesville*, 114 Wis.2d 140, 149-150 (Ct. App. 1983) ("Conditioning the option on the availability of common carrier passenger service makes sense. […] That availability exempts the board

[13] One might wonder why MPS does not simply state that it is not providing transportation to high school pupils attending their attendance area school. But, MPS's policy is written in a way that if the Milwaukee County Transit System were to scale back service (close bus stops or routes) or to cease operations completely, then high school pupils may become eligible for pupil transportation services.

from providing free transportation because pupils having a city bus available already have a means of transportation to and from school.").

MPS has expanded transportation services where a high school pupil cannot receive the appropriate education at his or her attendance area high school and has to attend either another attendance area high school or an MPS Citywide Specialty high school. (Rule 4.04(5)(a)2. & (5)(b)2.). SJA alleges that MPS's transportation policy as it applies to MPS Citywide Specialty high schools violates the "reasonable uniformity" requirement of Wis. Stat. § 121.54(1)(b).

The parties agree that the court in *St. John Vianney* held that "[t]he reasonable uniformity provision in sec. 121.54(1), Stats., prevents a school board from *distinguishing* for transportation purposes between public and private school *pupils on the basis of the distance they live from school*," 114 Wis.2d at 156 (emphasis added), and that "whatever the distance standard the board chooses, the distance standard must be reasonably uniform in its application to public and private school pupils." *Id*.

Here, MPS's transportation policy does not distinguish based on the distance the pupil lives from school because MPS's policy applies to attendance areas. MPS applies the same standard to those public and private elementary school pupils attending their attendance area elementary school. Similarly, MPS applies the same standard to those public and private high school pupils attending their attendance area high school. Likewise, MPS applies the same standard to those pupils attending a school other than their designated attendance area high school (whether it be another attendance area high school or an MPS Citywide Specialty high school).

In all instances, MPS will not provide transportation services to pupils living within two miles of the school, and a pupil may be eligible for transportation if they live two or more miles from school. Thus, MPS has not violated the "reasonable uniformity" requirement of Wis. Stat. § 121.54(1)(b).

Regarding the "July 1st deadline," it is undisputed that MPS may make its own transportation policies. (PPFF ¶ 8; DPFF ¶ 22). Nothing in Wis. Stat. § 121.54 prohibits MPS from imposing a deadline. The statute even has its own deadline where a school district must transport pupils. *See* Wis. Stat. § 121.54(2)(b)4. SJA asserts that the "July 1st deadline" violates the "reasonable uniformity" requirement, but the "reasonable uniformity" requirement only applies to the distance pupils are transported and not to an ancillary component of pupil transportation. *See St. John Vianney*, 114 Wis.2d at 155 ("We conclude that the 'reasonable uniformity' requirement is directed at the distance pupils are transported and not at the means of transportation chosen."). Therefore, MPS has not violated Wis. Stat. § 121.54 with its "July 1st deadline."

CONCLUSION

For the reasons set forth above, MPS asks this Court to grant summary judgment in its favor both on the Equal Protection Claim and the state law claim and to dismiss plaintiff's complaint in its entirety.

Dated and signed in Milwaukee, Wisconsin this 27th day of December, 2017.

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