STATE OF MINNESOTA

COUNTY OF ANOKA

DISTRICT COURT

TENTH JUDICIAL DISTRICT

J.H., as parent and natural guardian of N.H.,

Plaintiff,

and

Rebecca Lucero, Commissioner of the Minnesota Department of Human Rights,

Plaintiff-Intervenor,

vs.

Anoka-Hennepin School District No. 11; and Anoka-Hennepin School Board,

Defendants.

Court File No. 02-CV-19-922
Case Type: Discrimination
Hon. Jenny Walker Jasper

COMPLAINT IN INTERVENTION

INTRODUCTION

The State of Minnesota, by Rebecca Lucero, Commissioner, Minnesota Department of Human Rights ("MDHR"), brings this complaint against Defendants Anoka-Hennepin School District No. 11 and Anoka-Hennepin School Board to remedy and enjoin discrimination in violation of the Minnesota Human Rights Act ("MHRA"), Minn. Stat. ch. 363A. MDHR alleges that:

JURISDICTION AND VENUE

1. Plaintiff J.H., as parent and natural guardian of N.H., ("Plaintiff") brought claims against Defendants Anoka-Hennepin School District No. 11 and Anoka-Hennepin School Board under the MHRA. The Court has jurisdiction over the claims brought under the MHRA pursuant to Minn. Stat. § 363A.33, subds. 1 and 6.

Exhibit 1

2. Plaintiff-Intervenor Rebecca Lucero, Commissioner of the Minnesota Department of Human Rights has the authority to intervene in a civil action brought by a private party under the MHRA. Minn. Stat. § 363A.33, subd. 5. MDHR's complaint is issued pursuant to Minn. Stat. § 363A.33. The Court has jurisdiction over MDHR's claims, and the authority to allow the MDHR to intervene, under Minn. Stat. § 363A.33, as well as Minn. R. Civ. P. 24.

3. Venue is proper in Anoka County pursuant to Minn. Stat. § 363A.33, subd. 6. The unlawful discriminatory practices discussed herein occurred in Anoka County, and Defendant Anoka-Hennepin School District No. 11 has its principal place of business in Anoka County.

PARTIES

4. Plaintiff J.H. is the parent and natural guardian of N.H. J.H. and N.H. are residents and citizens of the State of Minnesota. N.H. is a transgender boy. At all times relevant to this complaint, N.H. was a minor.

5. Defendant Anoka-Hennepin School District No. 11 ("District") is a public independent school district in Minnesota. *See* Minn. Stat. § 123A.55. The District's duty and function includes furnishing school facilities to every child of school age in any part of the District. *Id*. § 123B.02, subd. 2. The District maintains schools in Anoka and Hennepin Counties. The District is legally responsible for operation of schools in the District.

6. Coon Rapids High School ("CRHS") is a public senior high school in the District, located in Anoka County.

7. Defendant Anoka-Hennepin School Board ("School Board") is the school board for the District. Minnesota Statutes section 1239B.09, subdivision 1 vests the care, management, and control of independent school districts in a board of directors, known as the school board.

The School Board manages the schools in the District, and adopts rules for the organization, government, and instruction for the schools in the District. The School Board has the authority to govern, manage, and control the District; to carry out the District's duties and responsibilities; and to conduct the District's business. Minn. Stat. § 123B.02. The School Board employs a Superintendent for the District, who serves as an ex officio nonvoting member of the School Board. *Id*. § 123B.143.

8. The District can be sued for, among other actions, "an injury to the rights of the plaintiff arising from some act or omission of the board." Minn. Stat. § 123B.25(a). The School Board is charged with defending actions against the District. *Id*. § 123B.02, subds. 17, 19.

9. CRHS and the District are educational institutions as defined by Minn. Stat. § 363A.03, subd. 14. The School Board, which governs the District, is part of a school system and is an agent of the District, including CRHS, as defined by Minn. Stat. § 363A.03, subd. 14.

10. Plaintiff-Intervenor is the State of Minnesota by Rebecca Lucero, Commissioner of the Minnesota Department of Human Rights. The Commissioner is a state officer with the authority to administer and enforce the MHRA on behalf of the State of Minnesota. Minn. Stat. §§ 363A.05-.06, 363A.28.

11. The Commissioner is authorized pursuant to Minn. Stat. § 363A.33 to intervene in a civil action brought by a private party under the MHRA upon certification that the case is of general public importance.

12. MDHR certifies that this civil action is of general public importance. MDHR seeks intervention in this lawsuit to obtain relief to ensure that the Defendants cease discriminatory practices affecting students in the District and operate the District's schools in compliance with the MHRA.

FACTUAL AND LEGAL BACKGROUND

13. It is the public policy of the State of Minnesota to ensure people are free from discrimination in education based on their membership in a protected class. Minn. Stat. § 363A.02, subd. 1(a)(5). The opportunity to have full and equal utilization of educational institutions is a civil right. *Id*., subd. 2.

14. It is an unfair discriminatory practice to discriminate in any manner in the full utilization of or benefit from any educational institution, or the services rendered thereby, to any person because of the person's membership in a protected class. Minn. Stat. § 363A.13, subd. 1.

15. It is an unfair discriminatory practice to engage in any reprisal against a person because a person opposed a practice forbidden by the MHRA. Minn. Stat. § 363A.15.

16. "Sexual orientation" is a protected class under the MHRA. Under the MHRA, it is unlawful to discriminate in education against any person because of the person's sex or sexual orientation. *E.g.*, Minn. Stat. §§ 363A.02, subd. 1(a)(5), 363A.13, subd. 1.

17. The MHRA defines "sexual orientation" broadly to include "having or being perceived as having a self-image or identity not traditionally associated with ones' biological maleness or femaleness." Minn. Stat. § 363A.03, subd. 44.

18. A person who is transgender has a gender identity that differs from the sex assigned to the person at birth, or a gender identity that does not conform to that typically associated with the sex to which the person was assigned at birth. *See, e.g.*, Minn. Dep't of Ed., A Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Nonconforming Students (revised Sept. 25, 2017) (link to Toolkit available at https://education.mn.gov/MDE/dse/safe/) (last visited Mar. 21, 2019) (hereinafter "Minn. Dep't of Ed. Toolkit").

19. "Gender nonconforming" generally describes a person whose gender expression (i.e., external appearance, characteristics, or behaviors) differs from stereotypical expectations. *See, e.g.*, Minn. Dep't of Ed. Toolkit.

20. Although gender identity does not correlate with sexual orientation, the MHRA's definition of sexual orientation includes having a self-image or identity not traditionally associated with a person's assigned sex at birth, i.e., "not traditionally associated with ones' biological maleness or femaleness." Thus, the MHRA forbids discrimination in education on the basis of gender identity, including discrimination because a person is transgender or gender nonconforming, as Minnesota Statutes section 363A.13 prohibits discrimination in education and in the educational services rendered to any person because of sexual orientation.

21. Minnesotans have a fundamental right to public education. Minn. Const. art. XIII, § 1. Public education in Minnesota serves to ensure individual academic achievement, an informed citizenry, and a productive work force. Minn. Stat. § 120A.03. Minnesota public schools must serve the needs of all students and provide a safe and positive environment to each student. *Id*. Schools play a particularly important and unique role for children and teenagers in their formative years.

22. National studies have found that alarming percentages of transgender and gender nonconforming students reported being harassed or bullied at school. For example, in a 2015 survey, the National Center for Transgender Equality found that 77% of students who were out or perceived as transgender or gender nonconforming reported having negative experiences, such as being harassed, attacked, or being prohibited from dressing according to their gender identity, at some point between grades K-12. James, S.E., et al., Nat'l Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* (2016) (available at

https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf) (last visited Mar. 21, 2019). Another national study of more than 10,000 youth found that 40% of the gender nonconforming students surveyed reported being frequently and often excluded by their peers. Human Rights Campaign Found., *Supporting and Caring for Our Transgender Youth* (link available at https://www.hrc.org/youth-report/supporting-and-caring-for-our-gender-expansive-youth) (last visited Mar. 21, 2019); *see also* Human Rights Campaign Found., *Growing Up LGBT in America* (available at https://www.hrc.org/youth-report) (last visited Mar. 21, 2019).

23. Minnesota has reported similar rates of harassment, bullying, and harm to transgender students. The Minnesota Department of Education's Minnesota Student Survey in 2016 found that transgender and gender nonconforming students in the 9th and 11th grades reported elevated levels of bullying and harassment, and that approximately 31% of transgender and gender nonconforming students in the 9th and 11th grades attempted suicide while approximately 61% had considered suicide. Minn. Dep't of Ed., et al., 2016 Minnesota Student Survey (available at https://education.mn.gov/MDE/DSE/MDE085585 and http://w20.education.state.mn.us/MDEAnalytics/DataTopic.jsp?TOPICID=242) (last visited Mar. 21, 2019); *see also* Minn. Dep't of Ed. Toolkit.

24. The District and School Board have previously faced claims of sex-based and sexual orientation-based discrimination against students in the District. For example, in 2012, to resolve *Jane Doe, et al., & United States v. Anoka-Hennepin Sch. Dist. No. 11, et al.*, D. Minn. No. 11-cv-01999, and *E.R. & United States v. Anoka-Hennepin Sch. Dist. No. 11, et al.*, D. Minn. No. 11-cv-02282, the District and School Board stipulated to a consent decree with the United States Department of Justice and the student plaintiffs that required the District and School Board to take proactive measures to eliminate and prevent future instances of sex-based

and sexual orientation-based harassment in the District's education programs and activities. The consent decree also required the District to revise policies and procedures to specify that all harassment, including harassment based on nonconformity to gender stereotypes and/or gender identity and expression, is prohibited. The consent decree remained in force for five years after its entry. Today, Defendants are not subject to a consent decree that addresses or focuses on discrimination students experience as a result of their sexual orientation or their gender identity.

FACTUAL ALLEGATIONS

25. A school that is safe, supportive, and welcoming plays a pivotal role in guaranteeing that a student develops into a socially and emotionally healthy young adult. Defendants District and School Board failed to meet this mandate, and unlawfully discriminated against N.H. based on his gender identity and status as a transgender student.

26. N.H., a transgender boy, enrolled in the District for the 2015-2016 academic year. The 2015-2016 academic year was N.H.'s freshman year of high school. He attended CRHS.

27. Prior to and during the 2015-2016 academic year, J.H. and N.H. met with school officials, to discuss N.H.'s preferred name and pronouns, interest in joining the swim team, and N.H.'s needs.

28. N.H. joined the boys' swim team for the 2015-2016 school year without objection. Swimming is a winter sport at CRHS. While participating on the swim team, N.H. used the boys' locker room with the boys' swim team without issue or incident. The swim team coach and the team members appeared happy to have N.H. on the team and did not voice a complaint about N.H.'s use of the boys' locker room with the team.

29. In or around late January 2016, the School Board Chair and/or members of the School Board asked the District's Superintendent whether any student was changing in a locker

room inconsistent with the student's assigned sex at birth. The School Board expected the Superintendent to be informed about any case where a student—assigned as one sex at birth—was using the same locker room or undressing in the same locker room as students assigned a different sex at birth.

30. Day-to-day locker room use of an individual student ordinarily would not fall within the Superintendent's or the School Board's responsibilities. Day-to-day locker room use of students would instead be the responsibility of building administrators.

31. In or around late January 2016, after being "assured" by the District's Title IX/Equity Coordinator that students assigned different sexes at birth were not changing in the same locker room, the Superintendent initially informed the School Board that no students were using the locker room other than the one consistent with their assigned sex at birth. The Superintendent and District staff later learned about N.H. using the boys' locker room on the swim team. The Superintendent or other District officials communicated to CRHS administrators that N.H.'s use of the boys' swim team locker room was not approved by the School Board.

32. On February 1, 2016, shortly before the swimming season ended, the CRHS assistant principal and N.H.'s school counselor met with N.H. to inform him that he needed to use a facility other than the boys' swim team locker room, pending more guidance. At the time, there were three swim team meets left in the season.

33. A few hours later that same day, the District reversed its decision and CRHS staff informed N.H. he could keep using the boys' locker room for the rest of the swim season. This reversal occurred after the District's Superintendent or other District officials spoke with the

School Board Chair. District officials discussed how there had been no concerns raised about N.H.'s locker room use and few days remained in the swim season.

34. Four days later, on February 5, 2016, N.H. was hospitalized. He was hospitalized for nearly two weeks.

35. On February 17, 2016, J.H. submitted a complaint to the School Board about how the District and School Board treated N.H., and urged the District to adopt a gender inclusive policy similar to the policy adopted by another Minnesota school district.

36. On February 22, 2016, the School Board Chair responded to J.H. The Chair stated, "When rest room and locker room accommodations are considered we try to balance and respect the privacy rights and needs of all students." The Chair indicated the District was "actively reviewing our facilities."

37. N.H. was admitted to a hospital again on March 2, 2016. He returned to school on March 21, 2016.

38. N.H. had planned to take a physical education ("PE") class for the spring 2016 trimester. J.H. and CRHS staff discussed N.H.'s locker room use for the PE class. J.H. communicated to CRHS staff, including N.H.'s school counselor and the assistant principal, that singling out a transgender student as the District had been doing was discriminatory. J.H. engaged in protected activity under the MHRA.

39. Before N.H.'s return to school on March 21, 2016, it was decided that N.H. would receive PE credit for the spring 2016 trimester based on his participation on the swim team. The District's Superintendent indicated he was "comfortable waiving this student's physical education requirement." The District did not make a decision on N.H.'s locker room use in the future.

40. On March 22, 2016, the District's General Counsel and Title IX/Equity Coordinator issued a memorandum titled "School Planning Guidance for Working with Transgender and Gender Non-conforming Students." Regarding rest rooms and locker rooms, the memorandum stated that "[d]ue to uncertainty" in state and federal law, "the use of rest rooms and locker rooms shall be determined on a case-by-case basis." When considering "accommodations," the memorandum stated that "there needs to be a balancing of rights between the transgender student and other students." The memorandum further provided:

> Any student who has a need or desire for increased privacy, regardless of the underlying reason, should be provided with a reasonable alternative changing area such as the use of a private area (e.g. a nearby rest room stall with a door, an area separated by a curtain, a PE instructor's office in the locker room or a nearby health office rest room) or with a separate changing schedule. Any alternative arrangements should be provided in a way that protects a student's ability to keep his or her transgender status confidential.

41. During the summer of 2016, before N.H.'s sophomore year, the District built an "enhanced privacy" boys' locker room area at CRHS. The enhanced privacy area was built within the footprint of the existing boys' locker room, however, the enhanced privacy locker room and the main boys' locker room were entirely separate and segregated. The two locker rooms had separate entrances and there was no door or pathway connecting the two spaces. The enhanced privacy area contained a private toilet stall and two private stalls for changing and showering.

42. The District did not build an enhanced privacy girls' locker room at CRHS in the summer of 2016. Upon information and belief, the District did not build an enhanced privacy locker room at any other District school during the summer of 2016.

43. For the 2016-2017 academic school year, N.H. was in 10th grade and returned to CRHS to start the school year.

44. N.H. planned to take PE during the 2017 spring trimester.

45. As the spring trimester drew near, J.H. and N.H. did not know if N.H. would be allowed to use the main boys' locker room. N.H. wanted to use the main boys' locker room. J.H. also wanted N.H. to use the main boys' locker room.

46. J.H. contacted CRHS administrators and District staff, including the District's Title IX/Equity Coordinator, about N.H. using the main boys' locker room for his spring PE class. J.H. did not receive an answer about N.H.'s locker room use. In late January 2017, J.H. wrote to the School Board stating that the District still had not made it clear where students could change for PE and whether a gender nonconforming student could use the locker room of the gender with which the student identifies.

47. A School Board meeting occurred on February 27, 2017.

48. On February 27, 2017, before the School Board meeting, J.H. asked District staff if School Board members would be voting about locker room use by transgender and gender nonconforming students. The District's Title IX/Equity Coordinator responded that the School Board would not be voting on a transgender bathroom policy that evening, but instead would be discussing J.H.'s request for N.H. "for phy ed 3rd trimester" in a closed session that was not on the meeting's agenda. The Coordinator stated the Coordinator hoped to have additional information about J.H.'s request soon.

49. At the February 27, 2017 School Board meeting, J.H. attended to urge the District to adopt a gender inclusive policy that does not discriminate against transgender and gender nonconforming students. The School Board held a closed session and did not allow J.H. to attend.

50. On March 1, 2017, J.H. asked the District's Title IX/Equity Coordinator, copying CRHS staff including the assistant principal and N.H.'s school counselor, if a decision on J.H.'s request had been made during the closed session.

51. On March 1, 2017, the District's Title IX/Equity Coordinator responded to J.H., thanking her for working with the District on accommodating J.H.'s child, stating that the District continued "to receive and consider additional input on this topic," and requesting that J.H. and N.H. meet with the Coordinator, the Superintendent, and CRHS's principal at CRHS to review J.H.'s request.

52. On March 8, 2017, J.H. and N.H. met with the District's Title IX/Equity Coordinator, the Superintendent, and the CRHS principal, at CRHS. District staff provided a tour of the enhanced privacy boys' locker room. The enhanced privacy boys' locker room at CRHS has a special, separate entrance and is a restricted area, segregated from the main boys' locker room. Students must typically apply for access to use the enhanced privacy area.

53. J.H. and N.H. provided feedback to District staff, and both reiterated that N.H. wanted to use the main boys' locker room, and not the enhanced privacy boys' locker room. J.H. and N.H. had concerns about N.H. using the separate and segregated, enhanced privacy boys' locker room. N.H. neither applied for nor wanted to use the enhanced privacy area. N.H. requested to use the main boys' locker room, a request he and J.H. repeatedly communicated to CRHS and District officials.

54. The next day, on March 9, 2017, the District's Title IX/Equity Coordinator e-mailed J.H., and included the CRHS principal, the Superintendent, the School Board Chair, and the District's general counsel on the e-mail. The Coordinator wrote, "After consideration of your input and the school board guidance, the district is assigning [N.H.] to use the boy's locker

room with enhanced privacy." Contrary to the anti-discrimination provisions in the Minnesota Human Rights Act and J.H. and N.H.'s wishes, the District did not allow N.H. to use the main boys' locker room. The decision was shared with the CRHS principal and staff.

55. The Superintendent informed the School Board about the District's decision on N.H.'s use of the locker room, but did not do so in a closed session of a School Board meeting.

56. On March 10, 2017, the School Board Chair wrote to J.H. The Chair thanked J.H. for her testimony at the February 27, 2017 School Board meeting. The School Board Chair wrote:

> Until specific clarification is received under state or federal case law, the use of restrooms and locker rooms will be determined on a case - by - case basis. The goal is to ensure that all students feel safe and comfortable. Plans for accommodation for restroom and locker room use are made in consultation with school building administrators, the Title IX Coordinator, and Superintendent.

The Chair further stated that he understood a meeting with J.H. and N.H. had occurred, "and the district has recommended [N.H.] use the boy's locker room with enhanced privacy."

57. District officials have indicated that the decision was allegedly based on providing privacy for all students. A District official has explained that the School Board's expectations were that the District made a decision that honored privacy concerns of all students in "intimate settings" where students change clothes. A District official indicated the District did not consider bullying, fighting, or assault in making the decision, and did not have concerns about bullying or harassment. The District official indicated safety was considered, but referenced only safety to N.H's mental health.

58. One District official indicated that the School Board made it clear that students should not be undressing in the same changing area if the students' assigned sexes at birth were different—a position that did not take into consideration a student's gender identity or the needs

and desires of a student or student's family, and was at odds with the "case-by-case" guidance—and the District's decision about N.H's locker room use was made based on this expectation.

59. On or around March 20, 2017, N.H. used the main boys' locker room, which was the locker room used by his peers and the one he wanted to use. CRHS and District staff became aware, called and spoke to J.H. on or around March 20 and 21, 2017, and had a conference with N.H. on or around March 20 or 21, 2017. CRHS or District staff stated that if N.H. continued to use the main boys' locker room, he would be treated as though he was in a prohibited area of the school. J.H. and/or N.H. asked for guidance about what the consequences would be if N.H. used the main boys' locker room. CRHS and District staff failed to provide clear guidance to J.H. or N.H. on what the consequences of those actions would be, and what discipline he could expect, other than indicating that he would be treated as if he was in an area of the school where he was not allowed to be. District staff provided the teacher's lounge as an example of an analogous prohibited area.

60. After the March 20 or 21, 2017 meeting, N.H. began to use the segregated, separate enhanced privacy boys' locker room under protest and under threat of discipline, so he could take his PE class.

61. A School Board meeting occurred on March 20, 2017.

62. The School Board has a policy encouraging public discussion on "subjects related to the management of the school district." Citizens who plan to participate or speak at the meeting generally must fill out a form identifying the speaker and "the subject to be covered or the issue to be addressed," which is provided to the School Board Chair before the meeting. The School Board's policy encourages public discussion but also indicates that there may be some restrictions or actions taken if testimony involves potential data privacy concerns or constitutes a

personal attack, or if a discussion would violate state or federal law, School Board policy, or an individual's statutory privacy rights.

63. At the School Board meeting on March 20, 2017, a large number of people attended and signed up to speak. J.H. again attended to advocate for N.H. and a gender inclusive policy, and a few others spoke in support. The majority of the speakers spoke against a gender inclusive policy. Some speakers referenced CRHS and/or a student using the locker room.

64. N.H. was again hospitalized on or around April 7 or 10, 2017. He withdrew from CRHS and enrolled in a school outside of the District for the remainder of the school year. He enrolled in a different school for the 2017-2018 academic year.

65. J.H. has maintained and alleged that Defendants' actions damaged N.H., including his mental, social, and/or emotional health. J.H. expressed such concerns and reported N.H.'s hospitalizations to Defendants. Segregating a minor student from his peers and treating him differently can be stigmatizing and harmful to the student, and his classmates.

66. On August 9, 2017, J.H. on behalf of her minor child (N.H.), filed a charge of discrimination with MDHR alleging the District discriminated against N.H. and J.H. in the area of education on the basis of gender identity.

67. The District responded to the charge of discrimination.

68. MDHR began investigating the charge, including interviewing District officials.

69. On February 25, 2019, counsel for the charging party J.H. notified MDHR that the charging party was filing a lawsuit in district court and withdrawing the charge. *See* Minn. R. 5000.0550.

COUNT I
DISCRIMINATION IN EDUCATIONAL INSTITUTION: DISPARATE TREATMENT
(MINN. STAT. § 363A.13)

70. Plaintiff-Intervenor re-alleges the foregoing paragraphs and incorporates those allegations by reference.

71. Minnesota Statutes section 363A.13, subdivision 1, states that it is an unfair discriminatory practice to discriminate in any manner in the full utilization of or benefit from any educational institution, or the services rendered thereby to any person because of the person's sexual orientation.

72. Under the MHRA, "sexual orientation" includes "having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness." Minn. Stat. § 363A.03, subd. 44. Sexual orientation discrimination under the MHRA therefore encompasses discrimination based on gender identity and discrimination based on an individual being transgender.

73. N.H., as a transgender person whose assigned sex at birth was female but who identifies as a boy, is protected from discrimination based on his sexual orientation as defined by the MHRA.

74. The District is legally responsible for operating the schools, including elementary and secondary schools in the district. The School Board is responsible for governing the District. The District is an educational institution within the meaning of the MHRA, and the School Board is part of a school system and is an agent of an educational institution within the meaning of the MHRA.

75. Defendants refused to allow N.H. to use the main boys' locker room for his spring 2017 PE class, because N.H. is transgender and based on N.H.'s gender identity. Defendants

assigned N.H. to a segregated, separate enhanced privacy boys' locker room for his spring 2017 PE class, and segregated N.H. from his peers and classmates over N.H.'s needs and desires, because N.H. is transgender and based on N.H.'s gender identity.

76. Defendants discriminated against N.H. in N.H.'s full utilization of and benefit from his high school and schools within the District, and the services rendered to any student in the district, because N.H. is transgender.

77. The District and School Board applied a guidance or policy that purports to allow "case-by-case" decision-making and to allow any student to specifically request an enhanced privacy area if the student has privacy concerns. However, Defendants actually banned and prohibited N.H. from using the main boys' locker room because N.H. is transgender. The District and School Board's decision was made over N.H. and J.H.'s objections, ignored N.H. and J.H.'s requests, and segregated N.H. from his classmates by relegating him to a segregated and separate changing space, based purely on his status as a transgender boy.

78. For transgender students, the so-called "case-by-case" guidance is a farce. The District did not allow N.H., a transgender student, to use the locker room based on N.H.'s own needs and desires, and those of J.H. The District, under the guise of making a case-by-case decision, banned a student from using a locker room because the student's assigned sex at birth differed from the sex assigned at birth to other students using the locker room. The School Board, on behalf of the District, effectively decided that no transgender student could use the locker room that conforms with the student's gender identity, if that identity is different from the student's assigned sex at birth. The School Board communicated this expectation to District staff. N.H.'s protected class status motivated the District's decision to deny him full and equal access to the locker room of his choice.

79. Rather than letting N.H. use the locker room that aligned with his gender identity, and letting N.H. decide how he wanted to navigate that space to get ready for his PE class, the District physically segregated N.H. from his peers. This physical segregation was stigmatizing and marked N.H. as different than his classmates. This physical segregation was also discriminatory.

80. Defendants did not have legitimate reasons for the District's actions. N.H. used the boys' locker room while on the boys' swim team his freshman year, without incident or objection. District officials have denied being concerned about bullying or harassment of N.H. or other students, and have not asserted legitimate safety concerns that are actually furthered by the District's decision to segregate and isolate N.H. from his peers. District officials' references to privacy concerns are not supported by actual complaints by other students, do not serve as legitimate reasons for their actions, and are based in discriminatory views of transgender and gender nonconforming students and gender stereotypes. The reasons cited by the District and School Board for the decision are pretext for segregating transgender students from their peers and discriminating against students based on their gender identities.

81. As a result of Defendants' actions, N.H. suffered harm as described in this Complaint.

COUNT II
DISCRIMINATION IN EDUCATIONAL INSTITUTION: HOSTILE ENVIRONMENT
(MINN. STAT. § 363A.13)

82. Plaintiff-Intervenor re-alleges the foregoing paragraphs and incorporates those allegations by reference.

83. Minnesota statutes section 363A.13, subdivision 1, states that it is an unfair discriminatory practice to discriminate in any manner in the full utilization of or benefit from any

educational institution, or the services rendered thereby to any person because of the person's sexual orientation. A hostile educational environment that denies or limits a student's ability to participate in or benefit from an educational program constitutes an unfair discriminatory practice.

84. The District's policies and procedures contributed to a hostile educational environment for N.H., as well as other transgender students. The District's policies and procedures failed to provide clear guidance regarding the use of restrooms or locker rooms by transgender students. As a result, the District did not provide guidance to N.H. or J.H. about what locker room N.H. could use from February 2016 until March 2017. N.H.'s simple request to use a locker room resulted in several meetings involving N.H. and/or J.H. and school officials, which would not have occurred but for N.H. being transgender. N.H. was subjected to more than a year of uncertainty as to whether he would be treated the same as his peers.

85. Defendants' implementation of their policies, procedures, and guidance also contributed to the hostile educational environment. The decision on N.H.'s request involved the School Board, the School Board Chair, and the District's Superintendent, which would not have occurred but for N.H. being transgender. Defendants apparently deviated from their stated practice and guidance, which indicated a student could request an accommodation such as using an enhanced privacy locker room but nowhere indicated a student would be forced to do so. Instead, Defendants forced N.H. to use the separate enhanced privacy area over N.H.'s and J.H.'s objections. Defendants segregated N.H. from his peers, which was stigmatizing and marked N.H. as different. Defendants further created a hostile educational environment by indicating N.H. was violating school rules when he used the main boys' locker room after his forced

assignment and by insinuating he could be disciplined if he continued to assert and exercise his right to be treated equally.

86. Defendants' actions, lack of clear policy and procedures, and implementation of existing policy and procedures, fostered a hostile educational environment based on N.H.'s gender identity. The District and School Board knew or should have known about the hostile environment, failed to address it, and largely caused and contributed to the hostile environment. N.H. had been using the boys' locker room while on the boys' swim team without incident or without objection, apparently until higher-level District officials and/or the School Board became involved.

87. Defendants' conduct in 2016 and 2017 was part of a pattern or practice of treating transgender and gender nonconforming students differently, constitutes a continuing violation, and may be considered in evaluating the hostile educational environment. Defendants tried to interfere in N.H.'s use of the boys' locker room in winter 2016 but reversed course the same day. Defendant failed to provide clear guidance to N.H. or J.H. about what locker room N.H. could use in spring 2016 or in the future, allowed for PE credit in the spring of 2016 and thus avoided making a decision, adopted a vague "case-by-case" guideline, and later constructed a separate enhanced privacy area for boys at CRHS during the summer of 2016. The District and School Board avoided providing clear guidance to N.H. and J.H. until March 2017, during N.H.'s sophomore year, when N.H. planned to take a spring PE class. The District and School Board then applied the so-called case-by-case guidance to ban N.H. from the main boys' locker room over his and his mother's objections. Defendants' conduct during N.H.'s freshman year is part of a continuing violation and is relevant to evaluating the hostile educational environment to which N.H. was subjected again in 2017.

88. The hostile environment N.H. experienced was sufficiently severe, pervasive, persistent, and conducted in a public forum as to deny or limit his ability to participate in or benefit from the educational program at his high school in the District. N.H. was hospitalized several times after Defendants' inconsistent and discriminatory actions. N.H. missed school due to the hospitalizations. CRHS and District staff pulled N.H. into meetings about his locker room use that would not have occurred if N.H. was not transgender. N.H.'s use of a locker room was allowed to be the subject of a public and hostile debate, that would not have occurred if N.H. was not transgender. N.H. ultimately was withdrawn from schools in the District. Defendants did not provide for a safe and welcoming educational environment that promoted N.H.'s mental and emotional health.

89. As a result of Defendants' actions, N.H. suffered harm as described in this Complaint.

COUNT III
REPRISAL (MINN. STAT. § 363A.15)

90. Plaintiff-Intervenor re-alleges the foregoing paragraphs and incorporates those allegations by reference.

91. Minnesota Statutes section 363A.15 states that it is an unfair discriminatory practice for any individual who participated in alleged discrimination as an educational institution or agent thereof to intentionally engage in any reprisal against any person because the person opposed a practice forbidden under Minn. Stat. ch. 363A.

92. Reprisal includes, but is not limited to, any form of intimidation, retaliation, or harassment. Minn. Stat. § 363A.15.

93. The District and School Board, as an educational institution, school system, and agent thereof, discriminated against N.H. by assigning him to the separate enhanced privacy

boys' locker room against his wishes and by allowing for a hostile educational environment against N.H.

94. N.H. opposed Defendants' discriminatory and forbidden practices, by repeatedly advocating for his right to use the main boys' locker room and by entering and using the main boys' locker room on or about March 20, 2017.

95. On or about March 20 or 21, 2017, District staff met with N.H. while he was at school, and informed N.H. and/or J.H. that if N.H. used the main boys' locker room, he would be treated as though he were in a prohibited area or an area of the school that he was not allowed to access. District staff failed to provide clear guidance to N.H. or J.H. about what the consequences would be if he continued to do so or if he was found in a prohibited area. J.H. and N.H. reasonably inferred that the District was threatening to punish N.H. or prevent him from taking PE if used the main boys' locker room.

96. N.H. was merely a sophomore in high school at that time.

97. District's staff action of taking N.H. out of class, informing him he would be treated as if he were in an unauthorized part of the school if he used the main boys' locker room like his peers, and threatening and alluding to discipline without providing clear guidance to either J.H. or N.H. about the consequences of N.H. using the main boys' locker room, constituted reprisal prohibited by the MHRA.

98. As a result of Defendants' actions, N.H. suffered harm as described in this Complaint.

RELIEF

The District Court has the authority to issue any relief authorized by Minn. Stat. §§ 363A.33 and 363A.29, subds. 3-6. *See* Minn. Stat. § 363A.33, subds. 6-7. MDHR

respectfully requests that the Court issue findings of fact and conclusions of law, and grant the following relief:

1. Enter an Order, pursuant to Minn. Stat. § 363A.29, subd. 3, finding that Defendants District and School Board violated Minn. Stat. §§ 363A.13 and 363A.15.

2. Order Defendants to cease and desist from engaging in Defendants' practices that violate the MHRA.

3. Order Defendants to review and revise Defendants' policies, procedures, and guidelines to ensure compliance with the MHRA; and to submit copies of the revised policies, procedures, and guidelines to the MDHR Commissioner for approval. *See* Minn. Stat. § 363A.29, subd. 3.

4. Order the District's employees, including but not limited to school principals, administrators, counselors, teachers, and coaches, and the School Board's directors and members, including the Superintendent, to undergo training on sexual orientation and gender identity discrimination, hostile environments, and reprisal, that is approved by the MDHR Commissioner. *See* Minn. Stat. § 363A.29, subd. 3.

5. Order Defendants to report to the MDHR Commissioner for a period of five (5) years on Defendants' compliance with the Court's Order, including but not limited to reporting on when the District makes decisions on how to treat transgender students if the District's policies continue to allow for District and School Board discretion. *See* Minn. Stat. § 363A.29, subd. 3.

6. Order Defendants to compensate Plaintiff J.H., as parent and natural guardian of N.H., in an amount up to three times the actual damages sustained, as well as punitive damages and damages for mental anguish and suffering, pursuant to Minn. Stat. § 363A.29, subd. 4.

Notice is provided that reasonable damages may be greater than $50,000, pursuant to Minn. R. Civ. P. 8.01.

7. Order Defendants to pay a civil penalty to the State that adequately reflects the public harm occasioned by Defendants' violation of the MHRA, among the other factors listed in Minn. Stat. § 363A.29, subd. 4.

8. Order Defendants to reimburse MDHR and the Minnesota Attorney General's Office for all appropriate investigation, litigation, and court costs expended in preparing for and conducting the hearing, pursuant to Minn. Stat. § 363A.33, subd. 7.

9. Award such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff-Intervenor MDHR demands a jury trial on all counts and issues so triable.

Dated: March 21, 2019

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Rachel Bell-Munger
RACHEL BELL-MUNGER
Assistant Attorney General
Atty. Reg. No. 0395962

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ATTORNEY FOR PLAINTIFF-INTERVENOR
COMMISSIONER OF THE MINNESOTA
DEPARTMENT OF HUMAN RIGHTS

MINN. STAT. § 549.211 ACKNOWLEDGMENT

The party or parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211 (2018).

Dated: March 21, 2019

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Rachel Bell-Munger
RACHEL BELL-MUNGER
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ATTORNEY FOR PLAINTIFF-INTERVENOR
COMMISSIONER OF THE MINNESOTA
DEPARTMENT OF HUMAN RIGHTS

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF ANOKA | TENTH JUDICIAL DISTRICT

J.H., as parent and natural guardian of N.H.,

Plaintiff,

vs.

Anoka-Hennepin School District No. 11; and Anoka-Hennepin School Board,

Defendants.

Court File No. 02-CV-19-922
Case Type: Discrimination
Hon. Jenny Walker Jasper

COMMISSIONER OF THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS' NOTICE OF INTERVENTION

TO: Plaintiff J.H. as parent and natural guardian of N.H., through counsel; and Defendants, Anoka-Hennepin School District No. 11 and Anoka-Hennepin School Board, through counsel.

PLEASE TAKE NOTICE that the State of Minnesota, by and through Rebecca Lucero, Commissioner of the Minnesota Department of Human Rights ("MDHR"), hereby notifies the Court and Parties that MDHR seeks to intervene in this civil action, pursuant to Minn. Stat. § 363A.33, subd. 5 and Minn. R. Civ. P. 24.02, or alternatively Minn. R. Civ. P. 24.01. Pursuant to Minn. R. Civ. P. 24.03, MDHR hereby provides notice that in the absence of an objection by an existing party within 30 days after service of this Notice of Intervention, intervention by Commissioner of the Minnesota Department of Human Rights shall be deemed to have been accomplished, and the Complaint in Intervention shall be served in accordance with Minn. R. Civ. P. 4.

NATURE AND EXTENT OF INTERVENTION

MDHR seeks to intervene to assert claims under the Minnesota Human Rights Act, Minn. Stat. ch. 363A ("MHRA"), against Defendants Anoka-Hennepin School District No. 11 and Anoka-Hennepin School Board ("Defendants"), as set forth in the attached Complaint in

Intervention (Exhibit 1). MDHR seeks to be allowed to serve the attached Complaint in Intervention to assert the MHRA claims against the Defendants.

REASONS FOR CLAIM OF ENTITLEMENT TO INTERVENTION

Plaintiff J.H., as parent and natural guardian of N.H., brought a claim alleging discrimination under the MHRA and stating that the Court has jurisdiction over the claims pursuant to Minn. Stat. § 363A.33, among other statutes. Plaintiff's Complaint alleges that J.H. filed a charge of discrimination with MDHR.

The Commissioner of MDHR is a State officer with the authority to administer and enforce the MHRA on behalf of the State of Minnesota. Minn. Stat. §§ 363A.05-.06, 363A.28. MDHR has the explicit statutory authority to intervene in a civil action brought pursuant to Minn. Stat. § 363A.33 upon certification that a case is of general public importance. *Id*. § 363A.33, subd. 5. Minn. R. Civ. P. 24.02 generally recognizes that if a party relies upon a statute administered by a state governmental officer or agency, as a ground for a claim or defense, the officer or agency may be permitted to intervene upon timely application.

MDHR hereby certifies that this Court action is a case of general public importance within the meaning of Minn. Stat. § 363A.33, subd. 5. This case involves allegations of discrimination on the basis of gender identity against an independent school district and the district's school board, as set forth in Plaintiff's Complaint and in the attached Complaint in Intervention (Exhibit 1). The case involves important and somewhat novel issues about discrimination by educational institutions. Application of the MHRA in this case could affect MDHR's administration and enforcement of the MHRA in the future.

Furthermore, MDHR had been investigating Plaintiff's charge of discrimination, as alleged in the attached Complaint in Intervention. MDHR's Complaint in Intervention and

Plaintiff's Complaint share common questions of both fact and law regarding Plaintiff's MHRA claim. Accordingly, MDHR has a strong interest in intervening as a plaintiff to assert claims against Defendants and to protect and advance MDHR's interests in enforcing the MHRA, and MDHR's interpretation of the MHRA.

MDHR also seeks intervention to obtain relief to ensure that Defendants cease discriminatory practices affecting students in the school district, and operate Defendants' schools in compliance with the MHRA. If successful, MDHR likely can obtain broader injunctive and prospective relief that changes practices and benefits students in the District, pursuant to Minn. Stat. §§ 363A.33, subd. 6 and 363A.29, subd. 3. Because litigation is recently commenced and is at a preliminary stage, no prejudice will result to the parties if the Commissioner intervenes to assert claims under the MHRA.

Dated: March 26, 2019

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Rachel Bell-Munger
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Assistant Attorney General
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ATTORNEY FOR APPLICANT TO
INTERVENE AS PLAINTIFF-INTERVENOR
COMMISSIONER OF THE MINNESOTA
DEPARTMENT OF HUMAN RIGHTS

MINN. STAT. § 549.211 ACKNOWLEDGMENT

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211 (2018).

Dated: March 26, 2019

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Rachel Bell-Munger
RACHEL BELL-MUNGER
Assistant Attorney General
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