

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Delores H. Fridge,  
Commissioner, Department of Human Rights,

Complainant,

**ORDER PARTIALLY GRANTING  
MOTION TO DISMISS**

v.

The State of Minnesota by its Board of Trustees of  
the Minnesota State Colleges and Universities,  
and its Minneapolis Technical College,

Respondent.

The above-entitled matter is before the undersigned Administrative Law Judge on Respondent's motion to dismiss. Respondent filed this motion on February 6, 1998. Complainant filed a memorandum in opposition to the motion on March 2, 1998. A hearing on the motion was held March 19, 1998, at 1:30 p.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. The record remained open to allow Respondent to address an issue raised at the hearing. The record on this motion closed with the receipt of Complainant's filing on March 24, 1998.

Peter M. Ackerberg, Assistant Attorney General, 445 Minnesota Street, Suite 1100, St. Paul, Minnesota, 55401-2128, appeared on behalf of the Respondent, Minnesota State Colleges and Universities (hereinafter MnSCU or Respondent). Patrick C. Sommers and Matthew R. Zahn, Certified Student Attorneys, and Carl M. Warren and Jean Gerval, Attorneys, Civil Practice Clinic, 190 Law Center 229 - 19th Avenue South, Minneapolis, Minnesota, 55455, appeared on behalf of the Complainant, the Minnesota Department of Human Rights (hereinafter MDHR or Complainant).

Based upon the Memoranda filed by the parties, all the filings in this case, and for the reasons set out in the Memorandum which follows:

IT IS HEREBY ORDERED that:

1. That Respondent's motion to dismiss Complainant's claims of discrimination is PARTIALLY GRANTED to the extent that all claims not expressly identified in the Charge of Discrimination filed on April 28, 1994 are DISMISSED.

2. Respondent's motion to dismiss all Complainant's claims of discrimination as being *per se* prejudicial due to laches is DENIED.

Dated this \_\_\_\_ day of April, 1998

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STEVE M. MIHALCHICK  
Administrative Law Judge

### MEMORANDUM

The motion before the Administrative Law Judge is for dismissal of the Complaint for procedural defects in how the matter was brought and for failure to state a claim for which relief may be granted. Because matters outside the pleadings have been presented by the parties, this motion has been treated as one for summary disposition on the issues presented.

Summary disposition is the administrative equivalent of summary judgment in the District Court. Minn. R. 1400.5500K. Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. **Sauter v. Sauter**, 70 N.W.2d 351, 353 (Minn. 1955); **Louwagie v. Witco Chemical Corp.**, 378 N.W.2d 63, 66 (Minn. App. 1985); Minn. R. Civ. P. 56.03. The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested cases. See Minn. R. 1400.6600.

It is well established that in order to successfully resist a motion for summary judgment, the non-moving party must show that specific facts are in dispute which have a bearing on the outcome of the case. **Hunt v. IBM Mid America Employees Federal Credit Union**, 384 N.W.2d 853, 855 (Minn. 1986). The existence of a genuine issue of material fact must be established by the non-moving party by substantial evidence; general averments are not enough to meet the non-moving party's burden. *Id.*; **Murphy v. Country House, Inc.**, 307 Minn. 344, 351-52, 240 N.W. 2d 507, 512 (1976); **Carlisle v. City of Minneapolis**, 437 N.W.2d 712, 715 (Minn. App. 1988). Summary judgment may be entered against the party who has the burden of proof at the hearing if that party fails to make a sufficient showing of the existence of an essential element of its case after adequate time to complete discovery. *Id.* To meet this burden, the party must offer "significant probative evidence" tending to support its claims. A mere showing that there is some "metaphysical doubt" as to material facts does not meet this burden. *Id.*

The Minneapolis Technical College (MTC) operated an Aviation Training program, located at Flying Cloud Airport in Eden Prairie, Minnesota (Flying Cloud campus). MTC later merged with MnSCU. Charging Party began coursework at MTC on September 20, 1993. Zahn Affidavit (2/27/98), Exhibit 12. Charging Party received a scholarship from Northwest Airlines to attend MTC. In October, 1993, Charging Party

complained to the administration at MTC that her instructor, B. Davis Lange, was discriminating against her on the basis of race in various areas of classroom behavior and examination scoring. Charging Party also complained that the tools she had been provided were rusty, old and not all functional.” *Id.*

The administration responded by investigating the claims, obtaining new tools for Charging Party, having Charging Party’s examination rescored, and reassigning Lange to higher division coursework away from Charging Party. Charging Party received three failing grades from Lange in three introductory courses. Under a new instructor, Charging Party received passing grades in three courses. When Charging Party complained about these failing grades, the MTC changed the grades to W (withdrawn). Zahn Affidavit, Exhibit 5, at 2. The reassignment of Lange occurred in early November, 1993. Zahn Affidavit, Exhibit 12, at 6.

Other students at MTC reacted to the transfer of Lange to upper division courses. These students used the loudspeaker to request signatures on a petition supporting Lange. A student questioned Charging Party as to why she complained about Lange. The MTC administration held an open meeting on November 24, 1993. MDHR characterizes the meeting as a “trial” of the Charging Party held in front of students at MTC. The allegations specifically identified in this paragraph were first disclosed to MTC in the Complaint.

Charging Party noted that students appeared to know the contents of her complaints and knew the details of her Northwest Airlines scholarship. On one visit to the administrative office she noted her scholarship check was in plain sight on a secretary’s desk.

In February, 1994, MTC contracted with the Minnesota Department of Administration, Management Analysis Division (MAD), to provide an assessment of the MTC’s approach to diversity and enhance the students’ opportunities for success. Zahn Affidavit, Exhibit 8. Susan Senko, Management Consultant for MAD, conducted focus groups of students and individual interviews of graduates, students, instructors, staff members, and others. *Id.*

Charging Party asserted that students were selling T-shirts with a monkey on the front and a common expression of Lange’s on the back. The T-shirt sales were alleged to have occurred in Spring, 1994. MDHR asserts that the T-shirts amount to a racial epithet. Charging Party did not complain to the MTC administration about the conduct by students in using the loudspeaker, asking questions, or selling T-shirts. She did not complain of any staff conduct regarding the November 24 meeting or not maintaining confidentiality of information.

On April 28, 1994, Charging Party filed a Charge of Discrimination with MDHR alleging racial discrimination. Ackerberg Affidavit (1/28/98), Exhibit A. The Charge alleges discriminatory treatment “including but not limited to”:

- a) being accused of cheating on an examination by Lange;
- b) information needed on examinations not being made available,
- c) initial denial of an opportunity to take an examination,

- d) being told a form was required due to absences,
- e) Lange refusing to credit Charging Party for time made up,
- f) Lange showing other students a helicopter when Charging Party and another student were out of class,
- g) tools arriving late and in poor condition, and
- h) not receiving a grade for a class and being offered no credit for that class.

Ackerberg Affidavit (1/28/98), Exhibit A.

MDHR transmitted the Charge to MTC on May 3, 1994. Zahn Affidavit, Exhibit 2. MTC initiated an investigation in response to the Charge. MDHR granted two requests for short extensions of time for MTC to file its response. *Id.* Exhibits 3 and 4.

In May, 1994, Senko produced the report (MAD Report) arising out of her investigation begun in February, 1994. In that Report, she found:

More nontraditional students are entering aviation-related fields every year. This diversity in students is not reflected in the aviation program's teaching staff. Students said they feel that many teachers do not understand or "have not accepted" that the aviation field is becoming more diverse. An "atmosphere of harassment" that many nontraditional students say they experience is therefore not "recognized" by faculty and consequently is allowed to continue.

Students said that some instructors use inappropriate and exclusionary language in and outside the classroom; lewd jokes and comments have been seen posted on walls and overheard in the common areas; pictures of naked women are posted in the shop area closets; and T-shirts with insulting messages were being sold at the airport campus.

One woman student said she was physically threatened by a male student in a classroom and felt compelled to file a complaint with the local police. another female student said she dropped out because of the insensitivity of an instructor who did not treat her in a "professional way."

Students noted that some instructors treat them like children and generalize about students based on gender or race. "Teachers talk to female students differently," one woman said, "and there's this presupposition that men know everything mechanical and women know nothing." Male students said that this attitude made it harder for them to admit when they didn't know an answer. They said that they were embarrassed to ask questions, because of the assumption that "they were supposed to know." Male and female students said that generalizations based on gender and race hurt everyone.

Zahn Affidavit, Exhibit 8, MAD Report, at 3.

MTC filed its response with MDHR on June 17, 1994. *Id.* Exhibit 5. The response indicated that MTC had initiated an investigation of many of the allegations

contained in the charge at the time those complaints were first brought to the attention of the school's administration. *Id.* Exhibit 5, at 5.

Lisa Ybarra, Enforcement Officer for MDHR was assigned to investigate Charging Party's allegations against MTC. Due to her caseload of between 75 and 100 cases and her other duties for MDHR, Ybarra "was unable to devote a substantial amount of time to this charge from July 11, 1994, to February 21, 1995. On February 21, 1995, Charging Party notified Ybarra that the MAD Report had been available and identified Senko as the person to contact about that Report. Zahn Affidavit, Exhibit 2. On March 21, 1995, Ybarra interviewed Senko, but did not receive any information about specific witnesses.

Charging Party left the Aviation Program at MTC in Spring, 1995. Zahn Affidavit, Exhibit 12, at 8.

From April, 1995, to March 20, 1996, Ybarra waited for Senko to transmit her notes from the interviews Senko conducted in preparing the MAD Report. Those notes were never sent to Ybarra. Between March 20, 1996 to July 3, 1996, Ybarra interviewed Marian Simpson, Donjia Taylor, Charles Dean, and Albert Young. Ybarra could not locate two other potential witnesses. Zahn Affidavit, Exhibit 2. Charging Party found the telephone number for Dean. Several telephone messages were left for one of the potential witnesses, but he did not return Ybarra's calls. Third Ackerberg Affidavit, Exhibit B. Charging Party advised Ybarra of a change in Simpson's employment on March 20, 1996. *Id.* Exhibit C.

Ybarra took a medical leave of absence from June 26, 1996, to August 12, 1996. No other investigators worked on Ybarra's cases during the time she was on leave. Zahn Affidavit, Exhibit 2.

On November 6, 1996, more than 30 months after the charge had been filed, MDHR issued a finding of probable cause. Zahn Affidavit, Exhibit 10. A memorandum attached to the finding stated that probable cause had been found, that the Charging Party had alleged ongoing discriminatory treatment based on race, and that:

3. Evidence found that several other black students had the same problems with Respondent's instructor that Charging Party had. These students reported doing better academically with different Respondent instructors. The Charging Party provided witness evidence that she was subjected to differential treatment in the classroom by Respondent's instructor. Investigation supports Charging Party's contention that she was subjected to discriminatory treatment because of her race.
- 4 Investigation, via the Minnesota Department of Administration's report, found evidence of "high minority student dropout rates, nonexistent diversity training, and fragmented communication." This report indicates that many teachers do not understand or have accepted that the aviation field is becoming more diverse. Therefore, an "atmosphere of harassment that many nontraditional students say they experience is therefore not recognized by faculty and consequently is

allowed to continue.” The report further states that “an atmosphere of harassment has been allowed to exist at the airport campus.”

Evidence indicates that Respondent did not always take timely and appropriate action when it was notified of Charging Party’s complaints.

Evidence indicates that Respondent took action only; (*sic*) after the Charging Party’s and other black student’s parents became involved and met with Respondent’s school president.

Zahn Affidavit, Exhibit 10.

On June 11, 1997, MDHR issued a Complaint in this matter, alleging four counts of discrimination. Count I alleges discrimination arising out of Lange’s conduct. Count II alleged Charging Party was subject to differential treatment based on race. Count III alleges MTC committed reprisals against Charging Party by releasing information about her and about her complaints against Lange. Count IV alleges the MTC constructively expelled Charging Party by “encouraging and allowing a racially hostile atmosphere and learning environment to exist at the school.” Among the thirty-one paragraphs detailing the allegations supporting the Complaint are allegations of conduct by students, staff, and MTC administrators. Zahn Affidavit, Exhibit 12.

Respondent has brought a motion to dismiss the Charge of Discrimination and MDHR’s Complaint in its entirety under Minn. R. Civ. P. “12(b)(6)”. There is no Minn. R. Civ. P. 12(b)(6), the proper reference is Minn. R. Civ. P. 12.02(e). An Administrative Law Judge may dismiss all or part of a case for appropriate reasons. Minn. Rule 1400.5500(K). Respondent argues that the finding of probable cause was not made within the one year period allowed by Minn. Stat. § 363.06, subd. 4, and that the delay was prejudicial to Respondent. Respondent also moved for dismissal of all allegations not contained in the Charge and dismissal of the claim of constructive expulsion.

### **Discrimination Claim Procedures**

Under the Minnesota Human Rights Act (“HRA”), a charge of discrimination must be filed with the Commissioner of the Department of Human Rights within one year after the occurrence of the practice. Minn. Stat. § 363.06, subd. 3. All of the acts alleged to constitute discrimination occurred within one year of the date the Charge was filed.

The HRA also requires:

Subd. 4. Inquiry into charge. (1) Consistent with clause (7), the commissioner shall promptly inquire into the truth of the allegations of the charge. The commissioner shall make an immediate inquiry when a charge alleges actual or threatened physical violence. The commissioner shall also make an immediate inquiry when it appears that a charge is frivolous or without merit and shall dismiss those charges.

The commissioner shall give priority to investigating and processing those charges, in the order below, which the commissioner determines have the following characteristics:

- (a) there is evidence of irreparable harm if immediate action is not taken;

- (b) there is evidence that the respondent has intentionally engaged in a reprisal;
- (c) a significant number of recent charges have been filed against the respondent;
- (d) the respondent is a government entity;
- (e) there is potential for broadly promoting the policies of this chapter; or
- (f) the charge is supported by substantial and credible documentation, witnesses, or other evidence.

The commissioner shall inform charging parties of these priorities and shall tell each party if their charge is a priority case or not.

On other charges the commissioner shall make a determination within 12 months after the charge was filed as to whether or not there is probable cause to credit the allegation of unfair discriminatory practices,

Minn. Stat. § 363.06, subd. 4.

MDHR did not identify this matter as a priority case. The finding of probable cause was made 30 months after the Charge was filed. Respondent cites ***State by Beaulieu v. RSJ, Inc.***, 552 N.W.2d 695 (Minn. 1996), as standing for the proposition that the failure to find probable cause in this matter in a timely fashion requires that prejudice be found, *per se*, and the matter be dismissed. MDHR argues that the holding in ***RSJ*** expressly exempts matters that were already filed by the date of the Supreme Court's ruling. Further, MDHR maintains that no prejudice can be demonstrated by Respondent and that dismissing the charge will have an unfair impact on the Charging Party. MDHR alleges that Respondent is guilty of laches in failing to bring this motion sooner.

### ***RSJ, Inc. Holding***

The Supreme Court issued a detailed ruling on the impact of the Department's failure to find probable cause in ***RSJ***. The Court stated:

Jose's [RSJ] argues that the MDHR's failure to make a timely probable cause determination, coupled with the prejudice it suffered as a result, should result in the MDHR losing jurisdiction to proceed further. However, as the Supreme Court noted in ***Albemarle Paper Co. v. Moody***, 422 U.S. 405, 425, 95 S.Ct. 2362, 2375, 45 L.Ed.2d 280 (1975), "[o]n these issues of procedural regularity and prejudice, the 'broad aims of Title VII' provide no ready solution." While the Court was discussing Title VII, we see no difference in the HRA in that regard. We find nothing in the HRA which suggests that the MDHR's failure to make a timely probable cause determination is a jurisdictional bar to further proceedings. At most, the delay and any resulting prejudice raise

equitable defenses to be resolved by the ALJ. **EEOC v. Johnson Co.**, 421 F.Supp. 652, 656 (D.Minn.1975). In resolving these issues, the ALJ should be mindful that the relief, if any, granted to the respondent because of the MDHR's inaction may have an impact on the charging party. Any such impact should be minimized. (FN7)

We, therefore, hold that in all cases where the MDHR fails to make a determination of probable cause within 12 months after the filing of a charge, a respondent may seek appropriate relief from the administrative law judge. The relief granted by the administrative law judge should be in proportion to the prejudice suffered by the respondent and may include dismissal of the complaint. Normally, we leave the determination of prejudice and the relief to be granted to the administrative law judge; however, we conclude, as a matter of law, that probable cause determinations made 31 or more months after a charge is filed are *per se* prejudicial to the respondent (FN8) and require dismissal of the complaint.

Today's ruling that probable cause determinations made 31 months or more after a charge is filed are *per se* prejudicial to the respondent, requiring dismissal of the complaint, shall be applied to the parties before the court in this case and prospectively to all human rights charges filed with the MDHR on or after the date of this opinion. See **Turner v. IDS Fin. Servs., Inc.**, 471 N.W.2d 105, 108 (Minn.1991) (new rule of law generally applied to case before the court and to claims arising after the date of overruling decision).

**State by Beaulieu v. RSJ, Inc.**, 552 N.W.2d 695, 702-703.

The charge in this matter was filed on April 28, 1994, prior to the issuance of the decision in **RSJ**. By the language of the decision, the *per se* prejudice defense is not available to Respondent. MnSCU argues that its eligibility for priority status requires an extension of the *per se* prejudice standard to its situation. There is nothing in the Supreme Court's opinion to support such a conclusion. Similarly, there is nothing in the doctrine of laches to support its application against Respondent for not moving to dismiss sooner.

### **Appropriate Relief**

While *per se* prejudice is limited in **RSJ**, "appropriate relief" is available in "all cases where the MDHR fails to make a determination of probable cause within 12 months after the filing of a charge . . ." **RSJ**, 522 N.W.2d at 702. The HRA requires notice of a claim of discrimination be made within one year of the discriminatory act. Minn. Stat. § 363.03, subd. 3. The Charge of Discrimination lists eight specific items, all related to Lange. The finding of probable cause, made approximately 30 months later, identifies probable cause existing regarding disparate treatment in Lange's class and that Respondent "did not always take timely and appropriate action when it was notified of Charging Party's complaints." Zahn Affidavit, Exhibit 10. No specifics are provided as to what complaints were not acted on by Respondent.

The first time MnSCU had any notice of most of the charges in this matter was in the Complaint, issued 37 months after the Charge was filed and between 39 and 43 months after the actual events alleged to support the Counts in the Complaint. Since many of the specific allegations in the Complaint relate to conduct by students, the need for timeliness is more important to allow Respondent to investigate and perhaps remedy any existing situation while Charging Party remained at MTC as a student.

MDHR asserts that the failure of the MAD management consultant to transmit her investigation notes delayed the investigation into probable cause. MDHR also asserts that Respondent's two extensions of time to answer the Charge, incomplete information, and failure to locate witnesses contributed to the delay. Complainant's Memorandum, at 15.

While MDHR asserts that MAD was an agent of MTC, no facts are presented to demonstrate that the usual methods for obtaining government data (such as a request under the Minnesota Government Data Practices Act) would not have resulted in the disclosure of the information sought. The burden to investigate a Charge of Discrimination has been assigned to MDHR by the Legislature. Minn. Stat. § 363.03, subd. 4. There is no basis for delegating that burden to some other state agency, or to the Respondent.

The two extensions granted by MDHR totaled 23 days. The answer submitted by Respondent details the working of the Aviation Program and the responses taken to Charging Party's complaints. The information, while not complete, does answer each specific claim of discrimination in the Charge, point by point. The minimal delay in receiving the Respondent's answer does not justify a 30 month period before finding probable cause or an even longer delay in notifying Respondent of all the conduct now claimed to be discriminatory.

The investigator for MDHR "managed to locate and interview four key witnesses . . . between March 20, 1996, and July 3, 1996." Complainant's Memorandum, at 7. The four witnesses were Marian Simpson, Donjia Taylor, Charles Dean, and Albert Young. *Id.* Marian Simpson was identified as an "advisor for the Aviation Program" in Respondent's June 17, 1994 Response to the Charge of Discrimination. Zahn Affidavit, Exhibit 5, at 7. Donjia Taylor was Charging Party's classmate and friend during their enrollment at MTC. Charging Party was able to provide a telephone number for one witness and a subsequent employer for another, a year after the filing of the Charge. One of the potential witnesses identified by MDHR simply didn't return calls. Neither the finding of probable cause nor the Complaint make any mention of either Dean or Young. There is no evidence that any failure by Respondent caused any delay in the finding of probable cause or the omission of many allegations of discriminatory conduct from either the Charge or the probable cause finding.

MDHR maintains that no relief is appropriate because Respondent cannot demonstrate prejudice. Students are a transient population. A delay of one year by the MDHR investigator rendered the process of contacting witnesses difficult. Zahn Affidavit, Exhibit 2, at 4-5. There is no reason to think that a delay of three years would render the process any less difficult. The MAD Report is cited as providing notice for Respondent to begin an investigation in 1994, and described by MDHR as follows:

The Findings Summary indicated the presence of an atmosphere of **racial** harassment, the use of inappropriate and exclusionary **racial** language by instructors in and out of the classroom, lewd jokes, written **racial** comments posted on the walls, the presence of **racial** comments in the common areas, and the sale of T-shirts with insulting **racial** messages. MAD Report, Zahn Aff., Exh. 7 [sic] at 3.

Complainant's Memorandum, at 20 (emphasis added).

The language relied upon by MDHR as providing notice has been reproduced earlier in this Memorandum. The MDHR characterization of that language adds the very specificity absent from the original. Had such language been in the MAD Report, MTC could possibly have received some notice of the acts alleged for the first time in the Complaint. Since specificity is lacking in the MAD Report and the allegations are totally absent from both the Charge and the finding of probable cause, there is no basis to find that Respondent failed to properly investigate the claims at the time Charging Party began complaining of discrimination. It would be Kafkaesque to require that a respondent investigate claims of discrimination **not** made.

Prejudice can arise out of untimely notice of a discriminatory practice. In this matter, the Complaint alleges that a hostile environment existed that resulted in a constructive expulsion. The MTC is entitled to notice of the situation that corrective measures may be taken, unless knowledge can be imputed. *Klink v. Ramsey County*, 397 N.W.2d 894, 902 (Minn. App. 1986). The record on this motion does not provide any basis for imputing knowledge to MTC that a hostile environment existed on the Flying Cloud campus in Fall, 1994, or Winter or Spring, 1995. MDHR relied upon the MAD Report in finding probable cause in this matter. But that Report also stated:

***Closing remarks***

The nature of this kind of study is to pay more attention to what is wrong with a program than to what is working. The new program administrator of the aviation program is moving forward on many of the recommendations listed and has made considerable progress against great odds. What is needed next is a strategic plan to implement the changes and a commitment from the downtown administration to support the program's efforts.

Zahn Affidavit, Exhibit 12, at 15.

Taking the facts in the light most favorable to the Complainant, the MAD Report does not support a claim that MTC ignored any hostile environment that existed at the Flying Cloud campus. Failure to timely notify MTC of any claims of hostile environment during the year prior to Charging Party leaving school is prejudicial to Respondent.

The Judge is mindful that the Supreme Court directed that the impact on a Charging Party be minimized and the relief afforded be proportionate to the prejudice suffered. In this matter, dismissal of all charges not expressly included the Charge of Discrimination accomplishes both of these outcomes. Charging Party was aware of all the events contained in the Complaint (except her leaving school) at the time she filed her Charge. She chose to focus her Charge on the conduct of Lange. Having focused

the Charge on Lange's actions, Charging Party ran the risk that any subsequent investigation would not uncover other matters that could have been included in the Charge. Limiting the Complaint to matters identified in the Charge affords appropriate notice to Respondent and puts the Charging Party in no worse position than she occupied on April 28, 1994, when the Charge was filed.

### **Constructive Expulsion Claim**

Since the claim of constructive expulsion was first made in the Complaint, the claim is dismissed as part of the appropriate relief described above. But another ground for dismissing the claim warrants discussion. As mentioned above, Charging Party filed her Charge of Discrimination in April, 1994. As mentioned in the Complaint, Charging Party continued as a student at MTC in the Aviation Program until Spring, 1995. Zahn Affidavit, Exhibit 12, at 8. The last specific discriminatory conduct is alleged to have occurred in Spring, 1994, prior to the filing of the Charge. *Id.* Exhibit 12, at 7. The last act is described as "Students sold T-shirts in the lunchroom in the spring of 1994." *Id.* Exhibit 12, at 7. No further acts of discrimination are alleged anywhere in the Complaint after Spring, 1994. The passage of a year without an identified discriminatory act before leaving school is too long as a matter of law to support a claim of constructive expulsion. The Complaint fails to state an actionable claim of constructive expulsion and that claim must be dismissed.

### **Summary Disposition Analysis on Remaining Claims**

The claims that have not been dismissed as part of Respondent's appropriate relief must also be assessed to determine if those claims present genuine issues of material fact that remain for hearing. There is no dispute between the parties that Charging Party complained about Lange's conduct and the MTC's failure to provide new tools. Respondent asserts that its responses to the Charging Party's complaints precludes Complainant from demonstrating a violation of the HRA as a matter of law. Respondent's Memorandum, at 7.

Timeliness of a response is itself an issue of fact under the circumstances of this matter. Respondent's Memorandum, at 7 (*citing Fore v. Health Dimensions, Inc.*, 509 N.W.2d 557, 561 (Minn. Ct. App. 1993)). The facts must be taken in the light most favorable to Complainant, since the Complainant is the nonmoving party. On the record of this motion, the Administrative Law Judge cannot conclude that Respondent has demonstrated a timely response was afforded to the Charging Party as a matter of law. Summary disposition is therefore denied on the remaining claims.

### **Summary**

This Order does not stand for the proposition that a Complaint is limited to the matters identified in the Charge of Discrimination. Any information discovered through timely investigation of a Charge can be used to form the basis of a complaint of discrimination. The investigation was not timely in this matter, running 30 months from the date of the Charge and a substantially longer period from the dates of occurrence. There is nothing in the finding of probable cause to support the claims of discrimination in the Complaint beyond the allegations in the Charge of Discrimination. The Complaint, issued 7 months after the finding of probable cause, identifies new acts of

discrimination, new persons who are alleged to have committed discriminatory acts, and a new ground for relief, constructive expulsion. The delay before notifying Respondent of these new charges is prejudicial. Following the holding of the Supreme Court in **RSJ**, appropriate relief has been afforded Respondent, while the adverse impact on the Charging Party has been minimized

S.M.M.