



CITY OF SAINT PAUL

*Christopher B. Coleman, Mayor*

240 City Hall  
15 West Kellogg Boulevard  
Saint Paul, MN 55102-1681

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May 11, 2017

Jill R. Gaulding  
Co-Founder and Legal Director  
Gender Justice  
550 Rice Street, Suite 105  
Saint Paul, MN 55103

**via U.S. CERTIFIED MAIL**

RE: David and Hannah Edwards v. Nova Classical Academy  
Case# A-5376

Dear Ms. Gaulding:

The above-captioned charges alleging violations of the Saint Paul Human Rights Ordinance have been thoroughly investigated and carefully considered. Based on witness testimony and documents gathered during the investigation, a determination has been made that there is probable cause to believe that violations of the Ordinance have occurred.

Pursuant to Section 183.20 of the Ordinance, I have the authority to facilitate a resolution of the Probable Cause determination through conciliation. The conciliation process is designed to provide a forum where both parties may reach an agreement on terms that would settle the matter and thus avoid litigation. A meeting for this purpose has been scheduled for **2:00 p.m. on Thursday, June 1, 2017**. The meeting will be held in **Room 240 City Hall, 15 West Kellogg Boulevard, Saint Paul, MN 55102**. It is imperative that you be present at this meeting.

Enclosed is a copy of the Memorandum of Findings. Upon receipt of this letter, please **contact Mr. Lao Yang at (651) 266-8971** to inform us of the damages you are seeking to settle this matter. You must contact **Mr. Yang** at least **one week prior to June 1, 2017**. If you fail to do so it is possible that no conciliation attempts will be made by the Department on your behalf.

Sincerely,

Jeffry Martin  
Deputy Director

Enclosure





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### MEMORANDUM OF FINDINGS

#### David and Hannah Edwards v. Nova Classical Academy Case# A-5376

*Pursuant to the provisions of the Saint Paul Human Rights Ordinance, a full and impartial investigation of the allegations in the above-referenced charge was conducted by this Department. Based on the results of that investigation, which are stated below, this Department has made a determination that probable cause exists to believe that Respondent unlawfully discriminated against Complainant:*

#### I. STATEMENT OF THE CASE

##### Complainants' Allegations

Complainants are the parent of the minor student herein referred to as "Child" enrolled with Respondent for the academic school year of 2015-2016. Respondent is the school at issue with grades kindergarten to Twelve. Complainants are filing this charge on behalf of the Child who was a kindergarten student for such school year. Complainants alleges when the Child began school with Respondent in September 2015, their Child presented as a gender-nonconforming boy – that is, as a boy who preferred clothing and activities often associated with girls. Complainants state that over the following months, it became apparent that their child actually had a female gender identity. In keeping with that, the child underwent a social gender transition everywhere but at Nova, and she now presents as a transgender girl.

Complainants state they originally chose Respondent for the Child because they thought it would be a good place for her to learn and thrive. Unfortunately, the Child was not able to take full advantage of Respondent's educational opportunities because of her gender identity and expression. Complainants allege that this violated her rights. More specifically, Complainants believe Nova violated their child's right to equal educational opportunity in two ways: (1) by failing to protect her and other gender-nonconforming or transgender students at the school from persistent gender-based bullying and hostility, and (2) by denying her the ability to undergo a gender transition at the school in a safe and

timely way. As a result of these violations, Complainants were forced to withdraw her from the school as of February 29<sup>th</sup>, 2016.

*(1) Respondent's failure to protect students from gender-based bullying and hostility*

Complainants allege that their Child faced gender-based bullying and hostility from her first days at the school. Complainants allege that the response of the school was frustrating and upsetting: while many on the staff were ready to take effective action, the school leadership (particularly the board chair and chair-elect) repeatedly blocked or delayed those actions. For example: In October, 2015, in response to a number of hostile comments made to their Child, the staff prepared to conduct training specific to gender issues as part of the school's anti-bullying week. Complainants allege that Respondent chose an age-appropriate book, "My Princess Boy," to support classroom discussions about gender identity and expression. But the school leadership stopped the staff from using the book and ultimately prevented the staff from delivering any effective proactive training. The leadership gave varying and unpersuasive explanations for their actions such as: the book had not been approved by the proper committee, talking about gender identity discriminated against other protected classes, and the school community needed time to weigh in on "controversial" topics.

Complainants allege that in the face of an increasingly frightening environment, which included a series of public committee meetings and school board meetings filled with discriminatory comments and threats and misstatements of the law, the school leadership continued to appease factions of the community who denied the school's obligation to follow the law. When begged to clarify their communications (e.g., regarding the school's policy on uniforms) and to take a clear position on the rights of gender-nonconforming and transgender students, the leadership refused outright or introduced delay after delay, while the bullying and hostility continued unabated. Complainants allege the leadership also chose actions – such as expressly inviting or even encouraging families to "opt out" of any education about gender and gender equality law – which indicated that the school was at best ambivalent about the rights of gender-nonconforming and transgender students. By its actions, the leadership also forced Complainants' family and their minor Child to be publicly outed in order to try to participate in decisions that would affect her safety.

*(2) Respondent's denial of our child's right to undergo a gender transition in a safe and timely way*

Complainants allege that throughout the year, they repeatedly asked the school to be ready to support their Child through a gender transition, should it become apparent that transition was necessary for her wellbeing. Complainants allege that after their Child expressed a consistent, persistent, and insistent desire to socially transition from male to female, they notified the school in early February 2016 that the time had come. Complainants agreed to meet with the school principal, the executive director, and the school's attorney several weeks later, on February 25<sup>th</sup>, 2016, to finalize all materials and information that would be presented to our daughter's classmates. Complainants allege that at that February 25<sup>th</sup> meeting, they came to an absolute consensus on the most pedagogically-effective means of supporting our child's transition. Key components included a letter to be sent home to kindergarten families notifying them of the transition; use of the book "I Am Jazz" in each kindergarten classroom; and communications for any families who asked about opting out of the classroom education, to direct them to equivalent content and to outline behavior expectations.

Complainants allege the next day, Friday, February 26<sup>th</sup>, they were abruptly informed that the plans we agreed on were canceled. Complainants allege that when asked for an explanation, the school board chair emailed to say that all of the decisions were made by him alone. Complainants allege they attempted to be cooperative and conciliatory over the weekend, to no avail. Complainants allege that under the circumstances, they had to keep our child out of school that Monday, February 29<sup>th</sup>. Complainants allege that in a meeting that evening, they were told that the school was not willing to use effective materials like "I Am Jazz"; would not ever conduct gender education, whether proactive or corrective, without first introducing delay and inviting or encouraging families to "opt out"; and would not even – as a bare minimum – simply inform the Child's classmates of her preferred name and pronouns, without first delaying for days and inviting or encouraging families to "opt out" of this information.

Complainants allege that in light of these and other actions, they therefore allege that Respondent discriminated against their Child in violation of the City of Saint Paul Human Rights Ordinance Section 183.05 in the area of education, on the basis of her sexual orientation and sex based gender identity and expression.

#### Respondent's Response

Respondent denies any and all discrimination and harassment against Complainant.

## **II. ISSUE**

1. Did Respondent discriminate against Complainants and their Child from gender-based bullying and hostility?
2. Did Respondent discriminate against Complainants and their Child when the Child was denied her request to undergo a gender transition in a safe and timely way?

## **III. FINDINGS OF FACT**

1. Complainants are the mother and father of a minor transgender student enrolled with Respondent as a Kindergartener for the academic school year of 2015-2016. The father will be referred herewith as Complainant-Father and the mother will be referred to as Complainant-Mother. Respondent is a public charter school located in Saint Paul, Minnesota. Respondent is in its thirteenth year of operation with grades kindergarten to twelve. Complainants' Child is in Respondent's Lower School with grades kindergarten to fifth grade.
2. On August 28, 2015, Complainants complete enrollment paperwork with Respondent to enroll Complainants' Child as a Kindergartener.
3. On August 31, 2015, Complainant-Father emailed the principal of the Lower School, [REDACTED], notifying the Respondent regarding the child's gender identity. The email states the Child does not conform to traditional gender roles and while he currently identifies as male, he always expressed himself as a "boy who likes girl things."

Complainant-Father expressed his concern about Respondent ensuring a school culture that is safe and welcoming to proactively deal with gender discrimination and bullying the Child may encounter from students, staff, or other parents. Complainants offered to reach out to collaborate to make the school environment safe and welcoming.

4. Complainant-Father also offered to help Respondent create new policies, if they are not currently in existence, and to re-examine how current policies might be adjusted. That day, [REDACTED] called Complainant-Father to leave a voicemail to arrange for a meeting.
5. On September 2, 2015, school began and the Child was also enrolled in the after school child care called Scholar Zone. On September 4, 2015, [REDACTED] proposed to the Complainants that she, [REDACTED], who is Respondent's Executive Director, [REDACTED], Student Support Services Director, the child's classroom teacher, and [REDACTED], the School Psychologist could meet to share resources.
6. [REDACTED] states that based on her experience working and having knowledge of works with students who are gender non-conforming, she was invited to the meeting. The meeting took place on September 15, 2017. [REDACTED] states that there was only one gender non-conforming student she is aware of during this school year. [REDACTED] states this was the only meeting she was a part of.
7. [REDACTED] states that one of the issues raised at the meeting was that the concern about how the student could be safe from any bullying or discrimination and the Complainants want the student to be a typical kindergartener that is treated fairly and justly. [REDACTED] states that between leadership, which includes [REDACTED] and [REDACTED], there was a plan for the child.
8. According to what [REDACTED] knows, there was a plan and leadership tried to do it the correct way by taking the correct steps but there were some difficulties going through the committees and the Board. There were changes the Board wanted to see made and [REDACTED] does not have knowledge of the specifics.
9. On September 15, 2015, the group met and among the issue of bullying was the discussion of the group sending a letter to kindergarten parents to advise them the students would be instructed on respect for a student who was gender non-conforming.
10. The group also brought up that Respondent's Climate Committee will be reviewing curriculum for October's Anti-Bullying Month and Complainants were notified of the meeting dates. There was also discussion of the group drafting and sending a letter home about everyone respecting the student that is gender non-conforming.
11. On September 22, 2015, at a faculty meeting for the Lower School, [REDACTED] shared the resource *Gender & Children: A Place to Begin*. [REDACTED] advised the staff that Respondent had a gender non-conforming student and encouraged the staff to consider the language they used in an effort to support Complainants' Child.
12. On September 28, 2015, [REDACTED], [REDACTED], and Complainant-Father met to continue discussion on a support plan for the Child. Complainant mentioned the use of the reading

- of the book *My Princess Boy* to the kindergarten classes. On September 30, 2015, Complainants' requested that the kindergarten teachers read this book. This information was shared with the Child's teacher and all kindergarten teachers.
13. On October 1, 2015, the first draft of the letter to be sent home was sent to Complainants for a review. On October 6, 2015, Complainants sent [REDACTED] a revision of the letter. On October 8, 2015, Complainants approved the letter with the revisions added. On October 9, 2015, [REDACTED] sent communication to kindergarten teachers to let them know that there was a meeting with Complainant-Father to finalize the plan to send the letter out the next week.
  14. On October 14, 2015, Respondent sent letters to kindergarten, Grades 1-3, and Grades 4-5 about the Child at issue and the use of the book. When the parents of students in the Lower School found out about the gender identity of the Complainants' Child and the reading of *My Princess Boy*, there were a lot of pushbacks and oppositions from the families about not running the book through a committee as well as the content of the book occurred. [REDACTED] states she spoke with [REDACTED] about just reading the book with Kindergarten but not with Grades 1-5 until a review process had happened. There is no policy or practice that books like *My Princess Boy* must be vetted before it can be read to the Lower School classrooms. This decision was made by [REDACTED] and [REDACTED].
  15. [REDACTED] and [REDACTED] decided to move forward as scheduled. [REDACTED] reassured the Complainants that Respondent would move forward with all grades, but wanted to send a letter clarifying the other anti-bullying activities Respondent would be doing because those were not specified in the first letter.
  16. At the time, Respondent also decided that if the link to the book was sent, parents could review the book and change their minds about its use in the classroom. This invited a lot more criticism for the use of the book.
  17. Respondent then also suggested including an opt-out clause in the letter because many parents were asking about that. Complainants did not want to include the opt-out clause because the clause invites objection. Respondent checked with their attorney to see if it was necessary to include the clause and after confirming that it was not, Respondent sent the clarification letter without the clause on Friday, October 16, 2015.
  18. Respondent sent a letter home with the link to a reading of *My Princess Boy*. Respondent encouraged parents to view the reading at home. At that time, there were 801 views on the link. As of 3:20 PM on October 21, 2015, there were 1,099 views.
  19. There were more parent pushbacks after viewing the link of the reading of *My Princess Boy* on why Respondent did not use a committee to review this book. Respondent decided after a meeting on Sunday October 18, 2015 to have the November Climate Committee Meeting review *My Princess Boy* before moving forward with reading the book to the students. Despite Complainants' insistence that Respondent should move forward with their initial decision to read the book, Respondent capitulated to the parent pushbacks and

reversed the decision to read the book. Complainant felt deceived by [REDACTED], [REDACTED], and the Board.

20. The October 18, 2015 letter states to the parents of the Lower School students that Respondent would not read the book until and unless approved by the Climate Committee. The Complainants specifically noted Respondent's failure on its reliance on drawn-out public debates over gender equality rights that "outed" the Complainants and their Child and placed the burden on them to argue for their Child's rights against a hostile opposition.
21. Complainants have stated that Respondent failed to protect students from gender-based bullying and hostility stemming from a number of wrong decisions: (1) The refusal to timely clarify the Respondent's policies or practices related to harassment, uniforms, names, and pronouns, and facilities access; (2) The introduction of unnecessary and harmful delay in presentation of anti-bullying instruction to Respondent's students; (3) The adoption of less effective instructional materials in an admitted effort to placate opposition families; (4) The insistence on issuing invitations to families to "opt out" of anti-bullying instructions which intentionally sent a message of ambivalence regarding the Respondent's anti-harassment policies; and (5) The refusal to treat gender-based bullying as legally equivalent to other forms of unlawful identity-based bullying.
22. When Respondent conducted its PowerPoint presentation about bullying which included the gender-based bullying training, 4 students out of 470 opted out. 55 families have emailed in their support. 35 have emailed objected and praised the Respondent for pulling the book and 3 families for 4 students opted out. 8% of the students objected to the bullying training. The students were allowed to opt out of the bullying training because the training was inclusive of gender-based bullying and harassment. By this, Respondent treats gender-based bullying and harassment different and less than other forms of bullying because the students are free to not participate in the training.
23. On October 26, 2015, the Board Chair, [REDACTED] issued a statement that Respondent pulled one book (*My Princess Boy*) from the anti-bullying training. This also means there will be no classroom reading of the book. According to [REDACTED], a concerted effort was made over MEA weekend by members of the Administration and Board to weigh the feedback from families both supporting and opposing the planned anti-bullying activities and certain teaching materials as Respondent decides to pull the book.
24. On October 29, 2015, Complainants, their attorney, [REDACTED], [REDACTED] and the Respondent's attorney met to discuss steps to ensure that the Child continued to be safe at school and discuss other concerns of the Complainants and their attorney. The group discussed the uniform policy because the Child wanted to wear the uniform jumper and they also wanted to see how they can educate the Lower School students that all students can choose to wear what they like within the restrictions of the school's dress code.
25. At the October 29, 2015 meeting, it was also reported that one Kindergartener had made comments to the Child such as telling the Child that she could not dress as a princess for Halloween because that was a "girl thing". [REDACTED] and the Child's teacher

talked and the teacher was asked to talk to the parent of the Kindergartener. There were no other or repeating incidents involving the Child and this Kindergartener.

26. Respondent used a poem from "*Play Free*" to replace *My Princess Boy* for the anti-bullying training. At the same time, Complainant-Father asked Respondent if Respondent will allow other parents to "opt out" of the instructions. Students were able to opt out from the PowerPoint presentation of *Play Free*.
27. On November 17, 2015, there was a staff training on Gender Identity by [REDACTED]. On November 21, 2015, Complainant-Father emailed the Respondent asking to meet before the Thanksgiving break as the Student would be starting to wear the uniform jumper after Thanksgiving. Complainant-Father also inquired about revisiting a gender inclusion policy.
28. On November 24, 2015, Respondent and the Child's teacher met with Complainants and their attorney to discuss how to support the Child when the Child began wearing the uniform jumper. The Child's teacher was confident that her class would be accepting and she would continue to be watchful for any negative interactions.
29. On October 12, 2015, Complainant-Father emailed the Child's teacher to report that a student said to the Child, "I don't like your gym shoes, they're for girls." The next day, the Child's teacher replied that she talked to the student that made the comment and will keep an eye on the situation.
30. On January 5, 2016, there was an incident with a classmate that the Child alleged that another made statements that the Child should not wear the uniform jumper to school. The Child's teacher confirmed that the student made the statement the first day the Child came to school wearing the uniform jumper. This was done aloud in front of the Teacher to which the Teacher states it was done out of curiosity and not malice.
31. The Teacher concluded the other two instances of the same student making comments about the Child's uniform jumper are not true. The first instance was during rest time when the Child said the other student whispered to him about wearing the uniform jumper. The second instance was that the Child went over to the other student's house over the (weekend) school break and that did not occur.
32. On January 5, 2016, Complainant-Father responded to an email of the alleged bullying on January 5, 2016 stating that the Child when being questioned where the Child thinks the Child could be in trouble would shut down and give strange answers to questions. However, the Complainant-Father launched an official bullying, anti-harassment complaint with this email to [REDACTED] because the Child also reported that comments about the Child's uniform were made "Mostly every day" and the Child would try to stay away from this student during recess. The Complainant-Father further state that because this behavior is directed towards the Child's gender identity, he and Complainant-Mother would like addressed and documented as a formal complaint in accordance with Respondent's anti-bullying policy.

33. After Complainant-father launched an official complaint pursuant to Respondent's anti-bullying policy where they would like to see this issue addressed. On January 7, 2016, Complainant-Father received an email from [REDACTED] that the Child's Teacher has talked to both students and has notified the parent of the other student. [REDACTED] will alert recess staff to keep a close eye on the Child's interactions, and if anything is brought to staff's attention by the Child, they will take it seriously and report it either to [REDACTED] and [REDACTED] to follow up. In addition, [REDACTED] states she will visit all kindergarten classroom to again reiterate the importance of not commenting on classmates' clothing, to stand up for each other, and to also tell an adult if and when they see any of these behaviors occurring. On April 15, 2016, [REDACTED] forwarded Complainant-Father's complaint to Respondent's attorney.
34. Respondent's policy and protocol on bathroom use is if a student or family raises this concern, Respondent's administration will work with the family as stated in the resolution. The student may choose to use single stall restrooms, the staff restroom, the nurse's restroom or the kindergartener restroom. It may be the adults will supervise restroom use or that students use the restroom in shifts to avoid having anyone feel excluded or that their privacy is invaded.
35. The waves of opposition from conservative parents and groups started in October 2015 after the first letter was sent home all the way to when the Complainants withdrew the Child from the school on February 29, 2017. The conservative parents launched a petition of their own to oppose the gender inclusive facilities, adopting and implementing policies at the school.
36. The opposition groups and families culminated in showing their opposing when the Minnesota Family Council hosted an event at Respondent's gymnasium on January 12, 2016 called *Title IX and Gender Identity*. Respondent allowed this event to proceed.
37. While some parents supported the Complainants and the Child in their quest to have the Respondent adopt fair Gender Inclusion Policies, the opposition grew stronger and stronger with multiple groups writing and making statements directed at the Respondent to persuade the Respondent from changing its policies to help what they called a "gender confused kindergartener boy".
38. Gender-based harassment and discrimination is not treated dealt with in the same context as race or disability discrimination. In the context of a Gender-based harassment, Respondent will be limited to speaking privately to the individual student committing the harassing acts without any use of instructional materials. No gender equality instruction is permitted without express, prior Board approval regardless of the degree to which the interposed delay reduces the effectiveness of the instruction.
39. In the context of a race based harassment where the Respondent states "If a black girl was being called 'n\*\*\*\*r' the administration would not have to run it by the Board before ... teaching students about race". Respondent treated the two forms of discrimination differently.

40. Respondent's administration is very inconsistent in working with Complainants in developing a plan for the Child to follow. A plan would be created and Respondent would allow the conservative parents and groups to use the platform to impose their objections and change or cancel the plan based on the severity of the pushbacks received.
41. Respondent's Board appointed a task force to look in a Gender Inclusion Policy on January 25, 2016. This gender inclusion policy would be additional to Respondent's anti-bullying policy. The Respondent's anti-bullying policy is inclusive of discrimination and harassment against individuals with a different physical appearance, sexual orientation including gender identity and expression.
42. The Gender Inclusion Policy was initially brought up by Complainants at the beginning of the school year when the parties first met to discuss the plans for the school year. Complainant-Father felt the Respondent intentionally delayed adopting a Gender Inclusion Policy that would have assisted in the transition and anti-bullying of the Child.
43. On January 28, 2016, Complainant-Father wrote asking Respondent to protect the Child's privacy and expressing some concerns about [REDACTED]'s message to families. Complainant-Father asked that such message be sent to him before sent to the school at large. The Complainant-Father states in his email that it is not an attempt to control the school, but he felt a lot of mistakes were made when the information was not shared. Complainants were subjected to a lot of hostility from other parents that expressed their frustration online.
44. Respondent's anti-bullying policy states that upon completion of an investigation that determines that bullying or other prohibited conduct has occurred, the school district will take appropriate action. Such action may include, but is not limited to, warning, suspension, exclusion, expulsion, transfer, remediation, termination, or discharge. Disciplinary consequences will be sufficiently severe to try to deter violations and to appropriately discipline prohibited conduct. Remedial responses to the bullying or other prohibited conduct shall be tailored to the particular incident and nature of the conduct.
45. For formal complaint of bullying that Complainant-Father launched, the response he received was [REDACTED]'s email discussed above at #25.
46. On January 20, 2016, there was a petition created by some unknown persons advocating that students who are transgender not be allowed to use the restroom that corresponds to their gender identity. There was a lot of tension and the Complainants even received threats online because the school community, mostly parents knew who they were. [REDACTED] testified that he finally decided to send out a statement that due to the nature of the hostility, he had to send out a letter to all parents of the school. The message states:

*It has come to our attention that some offensive and threatening comments have been posted by the non-Nova general public associated with recent media coverage on gender issues at our school. Fortunately, we live in school community where these sorts of comments and messages have no place and would be viewed in direction opposition to the very virtues that are part of a classical*

*education and in violation of Nova's Prohibition Policy (514). As Board Chair, I wish to thank the Nova community for not engaging in these sorts of intimidating and harmful dialogues.*

47. On February 11, 2016, Complainants advised the Respondent that the Child would socially transition at school. The Complainants and [REDACTED] worked out a social transition plan including a letter to kindergarten parents, talking points for the Child's visit to each classroom and a letter to parents who would choose to opt out of the instructions. The transition would formally change the Child's pronoun from he to she as well as a name change and the Child will be introduced by the new name. Also, part of the transition will be the reading of the book *I am Jazz*. The book can be summarized as:
- From the time she was two years old, Jazz knew that she had a girl's brain in a boy's body. She loved pink and dressing up as a mermaid and didn't feel like herself in boys' clothing. This confused her family, until they took her to a doctor who said that Jazz was transgender and that she was born that way. Jazz's story is based on her real-life experience and she tells it in a simple, clear way that will be appreciated by picture book readers, their parents, and teachers.*
48. On February 25, 2016, Complainants and administration met to discuss the transition the final time and after the meeting both Complainants and Respondent were ready to proceed. At the end of the day on February 26, 2016, Complainants' attorney received a phone call from Respondent's attorney that Respondent had backtracked and decided not to proceed with the plans to transition that everyone agreed to the previous day. Respondent states they now disagreed with the reading of the book, *I am Jazz*. The Complainants expressed their disappointment in the decision and asked Respondent for a meeting.
49. On February 27, 2016, Complainant-Father also emailed [REDACTED] that the Child has started telling her classmates on her own on the playground about the transition and one of the students told her at recess that "Boys can't be called she". The transition was going to start on February 29, 2016.
50. On February 29, 2016, Complainants emailed the Child's Teacher stating that the Child will be not be at school that day. They state that [REDACTED] changed the transition plan after they have agreed on after a two-hour long meeting with [REDACTED] and [REDACTED] the day before. Complainant was disappointed that Respondent informed them of the change on 5:30 PM on Friday, February 26, 2016. Additionally, the Complainants tried to call and email [REDACTED] and [REDACTED] for answer numerous times on the weekend.
51. Complainants state that Respondent was not willing to meet with them on February 29, 2016 and that was the date of the transition. The Child was confused as to why the Child was not going to school as the Child was anticipating the transition. Complainants were frustrated with the way their Child was treated at the school the whole year.
52. Complainants finally decided that since [REDACTED] and [REDACTED] are not even willing to contact them back or arrange for a meeting, that it is no longer safe to send their child to

school with Respondent. Complainants withdrew their child from enrollment with Respondent on March 1, 2016.

53. Respondent's Gender Inclusion Policy was finally adopted in May of 2016. The policy would allow for gender transition at school, names and pronouns transition, and the dress code would give students rights to dress in accordance with their gender identity. The students would have access to restrooms, locker rooms, and changing areas that align with the student's gender identity. Students have the right to participate in physical activity, classroom activity, or athletics that align with their gender identity. A student's transgender or gender non-conforming status is private information. That means a student has the right to discuss and express their gender identity and gender expression openly and to decide what information to share at their discretion. Just because a student shares their private information does not authorize the school to disclose the private information about the student.
54. Perhaps the strongest clause in the Gender Inclusion Policy is the anti-bullying or harassment policy. The scope of the Gender Inclusion Policy applies to Respondent's entire school community, including but not limited to school employees, students, parents/guardians, volunteers, and agents of the school.
55. The Policy further defined Assigned Sex, Gender Identity, Gender Expression, Gender Non-conforming, Gender Transition, and Transgender.
56. On March 24, 2016, Complainants filed this charge with the Saint Paul Department of Human Rights and Equal Economic Opportunity (HREEO).

#### IV. APPLICABLE LAW AND ANALYSIS

Section 183.02 (9) of the Saint Paul Human Rights Ordinance defines discrimination to include "all unequal treatment of any person by reason of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status or status with regard to public assistance." For purposes of discrimination based on sex, it includes sexual *harassment*. Sex is defined to include gender identity and gender identity means a person's actual or perceived self-image or identity as expressed through dress, appearance, behavior, speech or similar characteristics, whether or not traditionally associated with the person's physical anatomy, chromosomal sex, or sex at birth.

Section 183.05 of the Ordinance provides that, it shall be unlawful to 1) Discriminate in any manner with respect to access to, use of or benefit from any institution of education or services and facilities rendered in connection therewith, except that a school operated by a religious denomination may require membership in such denomination as condition of enrollment; 2) To discriminate against a person enrolled as a student by excluding, expelling or taking other actions against them; 3) To make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information, or to make or keep a record that indicates discrimination against a person seeking admission; and 4) To fail to ensure physical and program access for disabled persons. For purposes of this paragraph, program access includes, but is not limited to, providing taped texts, interpreters or other methods of making orally delivered materials available, readers in libraries, adapted classroom

equipment, and similar auxiliary aids or services. Program access does not include providing attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

Complainants allege Respondent discriminated against them on behalf of their minor child by failing to protect their child from “gender based bullying and hostility” and denying the Child’s transition from a boy to a girl.

### **1. Sexual Orientation and Sex based on Gender Identity**

The very essence of the Saint Paul Human Rights Ordinance with regards to the area of Education is for all students to be treated equally, fairly, free and clear from any bullying and harassment at their school and for every school in Saint Paul to share the responsibility and obligation to ensure that all students enrolled at the school are protected under Chapter 183.05 of the above-referenced ordinance.

This law protects students who are gender non-conforming or those that are regarded as having or being perceived as having a self-image or identity not traditionally associated with one’s biological maleness or femaleness from discrimination. As a matter of doing business in Saint Paul, all schools are to comply with this law so all students will have the same opportunity to be safe and successful at the school.

Applying the protection of Chapter 183.05 to the matter, the Complainants through their minor Child who is a gender nonconforming child is protected under this ordinance for the Child’s sexual orientation or gender identity. As the analysis below reveals, the Complainants and their Child were subjected to discrimination in any manner with respect to access to, use of or benefit from any institution of education or services and facilities rendered in connection therewith.

Respondent and Complainants from the very start of the 2015-2016 school year with Respondent’s Lower School (Grades K-5) engaged in an ongoing conversation about Complainants concerns for their Child that would be attending the school as a kindergartener. Complainants notified Respondent that the Child is a gender non-conforming student and specifically request Respondent to address the issues at school they feel are pertinent to the safety and development of the Child. They just want their Child to be like any other typical kindergartener and their hope is working closely with Respondent would achieve such.

This ongoing conversation between Complainants and Respondent specifically with its administration, [REDACTED] and [REDACTED] centered on concerns of gender based bullying and harassment; drafting a Gender Inclusion Policy that would address and define the scope of gender inclusiveness at the school that is consistent with this Ordinance; conduct gender inclusiveness training to staff; addressing the dress codes; using literatures that are appropriate to the Child’s situation; addressing pushbacks from conservative parents and groups; addressing opt outs; addressing parent and community hostilities towards Complainants and their Child; and allowing the Child to transition.

Specifically, the Gender Inclusion Policy would define Gender Identity, Gender Expression, Gender Non-conforming, Gender Transition, and Transgender. This policy further gives students the right to go through gender transitions at school, change names and pronouns usage, gives students

the flexibility to dress in accordance with their gender identity, grant students access to restrooms, locker rooms and changing areas that align with the student's gender identity asserted at school, allow students to participate in physical activities, classroom activities or athletics that aligned with their gender identity asserted at school, protect the privacy of the students and refrain from any disclosure on the student's identity, limit media and community communications to the Executive Director and his or her designee, and adopt a gender based anti-bullying and harassment policy all without having to go through constant challenges from parental, community and Board oppositions. Despite a lot of hostility and pushbacks, it was not until January 25, 2016 that the Board directed a taskforce to look into this policy and in May 2016 the school finally adopts its Gender Inclusion Policy. Chapter 183.05 of this Ordinance standing alone is sufficient to protect the above-referenced Child from gender based discrimination and harassment.

Complainants carefully met and communicated with Respondent throughout the year to plan and execute on objectives to help the Child. Respondent was very aware of all of Complainants requests and positions during their meetings and communications through emails. So when an objective is agreed on, it is understandable that Complainants have an expectation that Respondent will carry out and execute on such agreed objective.

Respondent and Complainant initially agreed to use the book *My Princess Boy* as part of the anti-bullying instructional materials during the anti-bullying month of October. Respondent then sends a letter to inform the parents of students in the Lower School about the reading of *My Princess Boy* because of a gender non-conforming student. This notification and disclosure of the Child's gender identity set-off a firestorm of pushbacks by parents and conservative groups. After the letter was sent, Respondent failed to carry on with reading of the book. Respondent should have taken reasonable efforts to address the pushbacks and proceed with their course of action they have previously planned with Complainants. However, Respondent's failure to execute on their plan reveals that they simply could not overrule the parent and group oppositions to gender inclusiveness at the school. This failure subjected the Complainants and their Child to public scrutiny, backlash, and even threats. Moreover, they invited parents and students to "opt out" of instructional materials on any gender inclusiveness education or activities at the school. This opt out provision implicitly allowed parents, community members, and students to object to Complainants and the Child's request to be treated equally and fairly due to the Child's gender non-conforming and gender identity. Respondent pulled *My Princess Boy* mainly because of pushbacks received from parents and conservative groups. By not permitting any preventive or corrective gender equality instructions and selectively inviting opt outs, Respondent is creating an organizational climate that questions whether gender-based bullying is really a problem and this violates Chapter 183.05.

Respondent's actions really undercut the Respondent's efforts to protect the interest of their gender non-conforming students. With race and disability discrimination and harassment, staff can act effectively address problems that arises without needing Board approval but gender based issues require Board approval and are often concurrently subjected to parental pushbacks. It appears the Board and administration yields to parental pushback and that is a great disservice to Respondent because they have the interest of the students to protect. At times, it is unclear whether the administration and Board runs the school or the parents. On January 20, 2016, there was a parent petition circulating that opposed gender equality at the school and there was no transparency that the Respondent tried to quash this petition in order to protect the interest of the Child.

On February 11, 2016, Complainants notified the school that the Child would be transitioning from a boy to a girl with a change in name and pronoun. Respondent's administration agreed and worked out a plan for the transition to take place on Monday, February 29, 2016. On Thursday, February 25, 2016, the Complainant met with administration one last time to review the transition plan and it was agreed that the Complainants and Respondent would execute and carry out the plan the following Monday. At the end of the day on Friday 26, 2016, Complainants were notified that Respondent had cancelled the transition because they did not agree on the literature to be used, *I am Jazz*. If Respondent disagrees with the use of the book, the Respondent should not have agreed to the transition and misled the Complainants about the transition. Respondent could not show why *I am Jazz* inappropriate to be used in this context. Once again, Respondent denied Complainants and their Child the right to transition and that violates Chapter 183.05.


On the day of the transition, the Child was thrilled about her big day and was asking the Complainants why she is not going to school? The Child was unable to understand the complexity involved but was hurt to find out that she would be denied the right to transition and will not be transitioning with Respondent. This denied harmed the Child.

During this time, Respondent directed a taskforce to look into a Gender Inclusion Policy that would and could have addressed these types of concerns. As with the previous times, the administration failed to follow the transition plan even though they have the authority to carry out and execute on the plan. This transition denial has led to a violation of Chapter 183.05 that Complainants and their Child, due to the Child's sexual orientation and gender non-conforming, gender identity, gender expression, and transgender was subjected to discrimination along with public scrutiny upon their request to be treated equally, free and clear of discrimination and harassment.

## 2. Conclusion

Pursuant to the findings above, a preponderance of the evidence supports a probable cause finding that Complainants through their child was discriminated against by Respondent in the area of education on the basis of sexual orientation, sex, and gender identity in violation of the Saint Paul Legislative Code, Chapter 183.05.

***In view of the foregoing, this Department concludes that there is probable cause for discrimination based on sex and sexual orientation indicating that Respondent violated the Saint Paul Human Rights Ordinance as Complainant had alleged.***

  
Jeffrey Martin  
Deputy Director

May 11, 2017  
Date