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THE BEST DEFENSE IS A GOOD OFFENSE:
Preventing and Preparing for Discrimination Claims

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I. INTRODUCTION

This presentation will explain the legal framework for state and federal anti-discrimination laws, including the Minnesota Human Rights Act, Americans with Disabilities Act, Section 504, Title VI, Title VII, and Title IX. An experienced attorney will share practical tips for identifying risks of discrimination claims and best practices for avoiding them.

II. ANTI-DISCRIMINATION LAWS

A. Federal Laws That Protect Employees.

1. Title VII prohibits discrimination and harassment in employment on the basis of an individual's race, color, religion, sex, or national origin. 42 U.S.C. § 2000e et seq.

a) *The Supreme Court recently held that the meaning of "sex" in Title VII must be interpreted to include gender identity and sexual orientation. Bostock v. Clayton Cnty., 590 U.S. 140 (2020).*

2. The Pregnancy Discrimination Act ("PDA") is an amendment to Title VII. It specifically prohibits discrimination on the basis of pregnancy, child birth, or medical conditions related to pregnancy or childbirth. *See* 29 C.F.R. pt. 1604.

3. The Equal Pay Act prohibits sex discrimination with respect to compensation and requires employers to provide equal pay for equal work. 29 U.S.C. § 206(d). It is part of the Fair Labor Standards Act ("FLSA").

4. Title II of the Genetic Information Nondiscrimination Act ("GINA") prohibits discrimination in employment on the basis of genetic information. 29 C.F.R. pt. 1635.

5. The Age Discrimination in Employment Act ("ADEA") makes it unlawful for an employer to refuse to hire, to discharge, to harass, or to otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age. 29 U.S.C. § 621 et seq. The ADEA applies only to employees who are forty years of age or older.

6. Title I of the Americans with Disability Act ("ADA") prohibits discrimination and harassment on the basis of disability in employment. *See* 42 U.S.C. §§ 12111-12117.

B. Federal Laws that Protect Students.

1. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color and national origin in programs or activities that receive federal funding. 42 U.S.C. § 2000d.

2. Title IX prohibits discrimination and harassment on the basis of sex in education programs and activities. The statute provides: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . ." 20 U.S.C. § 1681(a).

a) One federal court has determined that "sex" includes gender

identity and sexual orientation. Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586 (4th Cir. 2020) cert. denied 141 S.Ct. 2878 (2021). In addition, "sex" has been interpreted broadly by the Biden Administration to encompass gender identity and sexual orientation.

b) Title IX also protects employees.

3. Title II of the ADA prohibits discrimination on the basis of disability in the provision of government services, programs, and activities. *See* 42 U.S.C. §§ 12131-12132.

4. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination and harassment on the basis of disability. 29 U.S.C. § 794.

5. The Age Discrimination Act prohibits discrimination on the basis of age in any program or activity that receives federal aid. It does not apply to employees.

6. The Equal Access Act prohibits schools from denying equal access to their facilities. 20 U.S.C. § 4071 et seq. Specifically, the Act provides: "It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings." 20 U.S.C. § 4071(a).

C. State Law

1. The Minnesota Human Rights Act ("MHRA") prohibits discrimination and harassment based on race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age in employment and educational settings, among others. Minn. Stat. § 363A.01 et seq.

a) The MHRA protects employees:

"Except when based on a bona fide occupational qualification, it is an unfair employment practice for an employer, because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, familial status, membership or

activity in a local commission, disability, sexual orientation, or age to: (1) refuse to hire or to maintain a system of employment which unreasonably excludes a person seeking employment; or (2) discharge an employee; or (3) discriminate against a person with respect to hiring, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment." Minn. Stat. § 363A.08, subd. 2.

b) The MHRA also protects students:

(1) "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 race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance, sexual orientation, or disability, or to fail to ensure physical and program access for disabled persons." Minn. Stat. § 363A.13, subd. 1.

(2) "It is an unfair discriminatory practice to exclude, expel, or otherwise discriminate against a person seeking admission as a student, or a person enrolled as a student because of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance, sexual orientation, or disability." Minn. Stat. § 363A.13, subd. 2.

(3) It is also generally considered discriminatory to seek information concerning a student's protected characteristics as part of the application or admission process. In some cases, certain information may be collected but only if it is collected to evaluate the effectiveness of recruitment, admissions, and educational policies. The information must also be maintained separately from a student's application. Minn. Stat. § 363A.13, subd. 3 & 4.

(4) The Minnesota Court of Appeals recently clarified that the education section of the MHRA is interpreted more broadly than the employment section. N.H. v. Anoka-Hennepin Sch. Dist. No. 11, 950 N.W.2d 553 (Minn. App. 2020).

III. COMMON LEGAL CLAIMS ARISING FROM ANTI-DISCRIMINATION STATUTES

A. Discrimination Under Title VII. To state a claim for discrimination under Title

VII, an employee may present direct evidence of discrimination (i.e. explicit discriminatory statements) or circumstantial evidence of discrimination by establishing the following elements:

1. They are a member of a protected class;
2. They were meeting the employer's legitimate job expectations;
3. They suffered an adverse employment action; and
4. Similarly situated employees outside the protected class were treated differently. *Fields v. Shelter Mut. Ins. Co.*, 520 F.3d 859, 864 (8th Cir. 2008).

B. Hostile Work Environment Under Title VII. To state a claim for a hostile work environment, an employee must establish the following elements:

1. They belong to a protected group;
2. They were subject to unwelcome harassment;
3. The harassment was based on a protected classification;
4. The harassment affected a term, condition, or privilege of employment; and
5. The employer knew or should have known about the harassment and failed to take proper remedial action. *Scusa v. Nestle U.S.A. Co., Inc.*, 181 F.3d 958, 967 (8th Cir. 1999).

C. Hostile Environment Sexual Harassment Under Title IX. The elements of a legal claim for sexual harassment under Title IX are similar to those of a hostile work environment claim, but a plaintiff must prove that a school district was deliberately indifferent to the harassment. *See Davis Next Friend LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S.629 (1999); *see also Kinman v. Omaha Pub. Sch. Dist.*, 94 F.3d 463, 468 (8th Cir. 1996), *abrogated by Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998).

D. Discrimination Under the ADA. To state a claim for discrimination under the ADA, a plaintiff must establish the following elements:

1. They have a disability within the meaning of the ADA;
2. They are a qualified individual under the ADA; and
3. They suffered an adverse employment action as a result of the disability. *Fenney v. Dakota, Minnesota & Eastern R. Co.*, 327 F.39 707 (8th Cir. 2003).

E. Failure to Accommodate Under the ADA. To state a claim for failure to accommodate, a plaintiff must establish the elements of a disability discrimination claim plus the following:

1. The employer knew about their disability;
2. They requested accommodations or assistance for their disability;
3. The employer did not make a good faith effort to assist the employee in seeking accommodations; and
4. They could have been reasonably accommodated but for the employer's lack of good faith. *Schaffhauser v. United Parcel Serv., Inc.*, 794 F.3d 899, 906 (8th Cir. 2015).

F. Retaliation Under Title VII. To establish a claim for retaliation under Title VII, an employee must prove:

1. They engaged in protected conduct;
2. They suffered an adverse employment action; and
3. The adverse employment action was caused by the protected conduct. *Jackman v. Fifth Judicial Dist. Dept. Of Correctional Servs.*, 728 F.3d 800, 804 (8th Cir. 2013).

IV. PREVENTING CLAIMS

A. Understand Your District's Policies and Procedures and Keep Them Updated. Policies and procedures are a favorite focal point for plaintiffs' attorneys and administrative agencies. A plaintiff in a discrimination suit might try to point to a deviation from policies or procedures as evidence of pretext for discrimination. An administrative agency will almost certainly be interested in learning about a school district's policies and procedures during an investigation into a complaint or charge. As a result, it is critical for school district administrators and other representatives to familiarize themselves with the policies and procedures that are germane to their professional responsibilities and to consult such policies and procedures as necessary. Further, school districts should set up procedures for conducting meaningful reviews of policies and procedures to address instances in which a policy or procedure is outdated, inconsistent with the law, or is not workable in practice.

1. **MSBA Model Policies.** The MSBA's model policies are a great resource for school districts, but they generally are not intended to be a final product. Many MSBA policies are drafted in a way that requires school districts to add or delete information. Other MSBA policies contain procedural requirements, such as requirements for investigations, that may need to be modified because they do not necessarily work for all school districts. Finally, there may be some unique instances in which a school district would be better served by drafting its own policy instead of using a model policy.

2. **Discrimination and Harassment Policies.** Policies prohibiting discrimination and harassment are very likely to be a point of emphasis if a school district is ever faced with some type of discrimination claim. School districts should ask the following questions when reviewing these types of policies:

   a) Is the policy language consistent with applicable legal requirements?

   b) Are the school district's procedures for handling issues related to harassment or discrimination complaints consistent across policies?

   c) What is the process for handling complaints?

      (1) Is the process actually followed in practice?

   d) Is the school district capable of handling complaints in the manner prescribed by the policy?

   e) Does the policy require the school district to inform a complainant about the outcome of an investigation?

B. Provide Adequate Training to Staff. Efforts to keep policies and procedures updated and consistent with the law are meaningless if they are not accompanied by an effort to make District representatives aware of them. Employees and volunteers at all levels within a school district need to be familiar enough with the policies to actually follow them.

1. **Distributing Information.** There are several ways a school district can distribute information regarding policies and procedures, including the following:

   a) In-service events and other group training sessions;

   b) E-mail updates to all staff and volunteers whenever there is a significant policy or procedure change;

   c) Requirements that new employees and volunteers review policies and procedures at the time of hiring; and

   d) Periodic written updates or refreshers regarding important policies and procedures.

2. **Document the Means of Distribution.** A school district should keep detailed records showing how it notifies employees and volunteers of policies and procedures. These records should be stored in an area where they may be easily retrieved for future use.

   a) Individuals who attend training sessions should be required to sign a sign-in sheet. All sign-in sheets should be maintained by the school district in a way that would allow them to be easily retrieved.

   b) New employees and volunteers should sign an acknowledgement that they have reviewed policies and procedures at the time of hiring.

   c) E-mail correspondence used to distribute information about policies and procedures should be saved.

C. Respond Promptly to Reports. When an employee or a student reports concerns about discrimination or harassment, it is vital that school districts respond promptly to those reports. Many school districts' policies have specific timelines for responding to reports of discrimination and harassment. If yours does, follow it.

D. Conduct Solid Investigations. When complaints do arise, they must be handled properly. In all cases, this should involve some type of investigation. The nature of the investigation will depend on the circumstances. Even if a complaint appears frivolous on its face, it is not appropriate to do nothing or ignore the complaint.

E. Understand the Importance of Patience. We live in a world of instant gratification. In many highly charged situations, the adage of "patience is a virtue" can be critical. For instance, exercising the patience to gather sufficient facts before making high-stakes decisions or the patience to afford an employee or student the due process to which he or she is entitled before making discipline decisions will pay off greatly in the event a school district faces a legal challenge based on a decision or disciplinary action.

F. Understand Limitations. School district representatives should be encouraged to seek out help when they need it and to exercise self-awareness with respect to the limits of their skill sets.

G. Beware of Using Non-Protected Characteristics and Proxies for Protected Classes. Occasionally, school districts will defend against discrimination claims

by pointing to a basis for distinguishing between groups that is not a protected status.

H. Be Consistent. The hallmark of many discrimination claims is that a person is treated differently from others who do not share a protected status. Develop systems to ensure that similar situations are handled similarly.

V. COMMON FLASHPOINTS

A. Employees and Students

1. **Requesting Accommodations.** Both employees and students are protected from disability discrimination pursuant to the ADA, and students are also protected by Section 504. Situations in which claims could arise include:

   a) *"Why are you parked in an accessible parking spot? You can walk."* Not all disabilities are visible and employers generally should avoid making assumptions about what disabled individuals do or don't look like.

   b) *"I'm not sure depression is a disability."* Any physical or mental impairment that substantially limits one or more major life activities is a disability under the ADA.

   c) *Requiring shots and insurance for service animals*. The ADA does not allow public entities to impose requirements for service animals. When a person is attempting to bring a service dog into the building, the only questions they may be asked are whether it is a service animal and, if so, what tasks it has been trained to perform. If the animal is not under control of a handler, it may be removed. For students, there are a few more considerations about whether the student can control the animal during the school day.

   d) *"If we do that for you, everyone else will want the same thing."* The ADA requires schools to make reasonable accommodations and Section 504 requires schools to provide students with disabilities equal access to education as their non-disabled peers. Necessary reasonable accommodations should not be denied because of how other people will react.

   e) *"We don't... [offer American Sign Language interpreters; provide adaptive seating; turn down lights, etc.]"* As a general rule, schools

should not make universal statements about what accommodations will or won't be provided. The school must consider the individual needs of each person with a disability rather than providing blanket accommodations.

e) **Note:** For employees with disabilities who require reasonable accommodations, the district will need to conduct an interactive process meeting in which the employee is asked to provide certain information about their disability and the accommodations they require to perform the essential functions of their job. This should be done as a structured interview following a standard set of allowable questions.

2. **Making complaints.** Certainly, there are many complaints from a variety of school stakeholders that are meritless. But staff receiving such complaints should be on particularly high alert when the claim may concern a protected class. Examples could include:

a) "My classmates have made a game out of trying to touch my hair to see if it's real." – From a Black student (potential race discrimination)

b) "Mr. J asked me where I'm from and even though I told him I'm from New Jersey, he continued asking." – From a Black/Indigenous/Student of Color (potential national origin discrimination)

c) "Ms. L said she was surprised that I didn't have an accent when I read out loud." – From an English Learner (potential national origin or race discrimination)

d) "Mr. Z refused to provide me with extra time to take a test, even though my 504 Plan says I have extra time." -- From a student with a disability (potential disability discrimination)

e) Staff should be particularly careful not to ignore complaints of microaggressions (indirect, subtle, or unintentional discrimination against members of a marginalized group). At minimum, the complainant should be given an opportunity to explain why they believed the incident was inappropriate

3. **Transgender or transitioning individuals.** Students and staff transitioning from one gender to another are protected by Title VII, Title

IX, and the MHRA. Methods to deter discrimination claims include:

a) *Use the individual's identified name and pronouns.* Using a former name ("dead-naming") or incorrect pronouns ("mis-gendering") are acts of discrimination. Unless a legal name is required by an outside entity, the preferred name should be used.

b) *Working with the individual to determine when and how to share their new name and pronouns, if applicable.* While the fact that a person is transgender is likely private personnel data on an employee and private educational data on a student, some individuals may want information shared with students, coworkers, or peers in advance.

c) *Allow transgender individuals to use restroom and locker room facilities consistent with their gender identity.* For students, this is explicitly required by case law interpreting the MHRA in schools. For staff, Title VII case law makes clear that excluding individuals from facilities that align with their gender identity will be considered Title VII discrimination on the basis of sex.

d) *Don't question whether the person is "really" transgender.* Avoid making comments or asking questions that suggest the person is going through a phase or hasn't taken sufficient time to make a transition. Under anti-discrimination laws, the fact that a person identifies with a sex different from their sex at birth is sufficient to confer legal protections.

B. Employees

1. **Hiring.** Questions about protected class status (or proxies for them) are prohibited. This includes age, birthplace, country of origin, citizenship, sexual orientation, marital status, family status, race or ethnicity, religion, or disability. (Although citizenship is prohibited, applicants can be asked whether they are legally permitted to work in the United States; with respect to disability, applicants can be asked whether they can perform the essential functions of the position with or without reasonable accommodations.) Applicants for employment may voluntarily provide such information, although it shouldn't factor into decision-making.

2. **Discipline**. Like situations should be treated alike to avoid claims of disability discrimination. Although situations are rarely identical, care should be taken to ensure that the reasons for distinguishing between them

are genuine. For example, if two teachers miss a mandatory training because they were caring for sick family members, they shouldn't be treated differently because one was caring for a child and the other for a parent.

C. Students

1. **Discipline.** A few years ago, the MDHR engaged in a significant enforcement action to address racial disparities in suspensions and expulsions. Many school districts entered into agreements with MDHR. Since that time, MDHR has not been very active in initiating investigations. Nonetheless, schools should be mindful of research showing that students of color are disciplined at a higher rate for the same conduct when compared to their white peers.

2. **Interactions with Parents**. Parents are also protected from discrimination under the ADA and Title VI. These include the right to translation and/or interpretation services if they speak a language other than English.

VI. AFFINITY GROUPS AND DIVERSITY, EQUITY, AND INCLUSION INITIATIVES

A. Are affinity groups discriminatory? In an attempt to provide supportive communities and space for underrepresented students, some schools have approved the creation of affinity groups based on race, such as a Black Student Union.

1. Such groups may face legal challenges, but are generally permissible so long as they do not exclude *all* individuals who are not the identified race. The U.S. Department of Justice Office for Civil Rights withdrew an older interpretation in 2021 that such groups were discriminatory.

2. Individuals who are openly hostile to a group's purpose or who actively promote antagonistic views may be excluded from the group. This would include students promoting white supremacy or using derogatory terms to refer to group members.

B. Diversity, Equity, and Inclusion (DEI) initiatives. Most DEI initiatives will not discriminate on the basis of protected class status because they do not exclude groups based on protected status.

VII. MANAGING LAWSUITS AND ADMINISTRATIVE COMPLAINTS

A. **Notify Legal Counsel and Insurer.** When a school district is served with a lawsuit or notified of an administrative complaint, it should immediately notify legal counsel and its insurer. This is important because lawsuits and administrative complaints have a short time period for responding.

B. **Preservation of Evidence.** In the litigation context, the law requires all parties involved in the dispute to preserve potential evidence. This obligation is triggered when a party becomes aware of a potential lawsuit. In many cases, this occurs before a plaintiff formally initiates a lawsuit. Since there can be harsh consequences and sanctions for a party that does not comply with its obligation to preserve records, it is important to address preservation issues as soon as a school district is aware of potential litigation. The following issues should be considered:

1. **Cease the Routine Destruction of Applicable Records.** If any school district records are routinely destroyed in accordance with a records retention schedule, a school district must immediately take action to ensure that any records related to a potential claim are preserved and are no longer subject to the routine destruction of records.

2. **Electronically Stored Information.** Many records will be maintained in an electronic format. Electronic records also need to be preserved. As with paper records, a school district must immediately take action to ensure that electronic records, such as e-mails, are preserved. If a school district lacks the capability to handle IT issues internally, it will likely have to consult with an outside vendor to ensure that it is able to retrieve and preserve electronically stored information.

3. **Printing Electronic Records is Not Enough.** Due to metadata contained in electronic documents, a school district is not in compliance with its records retention obligations if it merely prints hard copies of e-mails and other electronic documents. Electronically stored information must be preserved in its native format.

4. **Scope of Obligation.** The obligation to preserve records should be broadly construed. It is important for school districts to consult with legal counsel to determine what types of information should be preserved.

C. **Initial Fact Gathering.** Once a school district becomes aware of a claim, it will need to work with its insurer and legal counsel to begin gathering information for the purpose of evaluating the claim.

1. **Data Privacy Issues.** A school district may share information related to a

claim, including educational data or personnel data, with its insurer and legal counsel. These types of disclosures do not violate data privacy laws.

2. **Scope of Initial Fact Gathering.** The initial fact gathering should be as comprehensive as possible. The discovery phase of litigation will go more smoothly if a school district makes a serious effort at the early stages of a claim to gather relevant information and documentation. In addition, the school district's legal counsel and its insurer will use the information gathered to determine an appropriate strategy, which may include an attempt to reach an early settlement.

D. Updating the Insurer. After the school district's insurer is put on notice of a lawsuit or administrative complaint, it is important to keep the insurer updated on new developments. If the insurer has assigned an attorney to represent the school district, the attorney will generally provide updates to the insurer.

E. Media Strategy. If the claim is likely to garner media attention, a school district should work with legal counsel to determine an appropriate media strategy. The media strategy should address items such as who will be responsible for fielding questions from the media and the extent to which the school district wishes to comment on the matter. In most cases, one person should handle communications with the media to ensure that the school district's message stays consistent.

F. Resolving Claims. Most litigation cases are resolved through some type of settlement. Settlement is also an option for resolving most administrative complaints. These decisions are often difficult because they involve compromise.

1. **Insurance.** It is important to be familiar with your school district's insurance coverage. Some policies give the insurer authority to settle claims without taking into account whether the school district agrees with the proposed settlement.

2. **Settlement Agreements.** A settlement should be memorialized in a written document that includes a release of all claims. In addition, there are specific requirements that will apply for certain types of claims. For example, the Minnesota Human Rights Act ("MHRA") provides for a 15-day rescission period where a claimant may rescind a release of an MHRA claim.

3. **Cannot Agree to Confidentiality.** School districts cannot agree to language that would require a settlement agreement to remain confidential because such agreements are public data under the Minnesota Government

Data Practices Act. However, a school district could agree not to disclose a settlement agreement unless an individual or entity specifically asks for a copy.

VI. ADMINISTRATIVE COMPLAINTS

A. Administrative Charges and Complaints. School districts are frequently required to respond to complaints filed with federal and state administrative agencies. In fact, with most types of discrimination claims, an individual must file an administrative complaint before she may initiate a lawsuit.

1. **Form of Response.** The form of a response to an administrative complaint will depend on the agency that is investigating the complaint. Most administrative agencies will ask a school district (1) to provide a narrative response to the complaint and (2) to respond to specific information or document requests.

2. **Future Use.** School districts should not take responding to administrative complaints lightly for a variety of reasons. As an initial matter, a sloppy or inadequate response may result in future litigation or enforcement action against the school district. In addition, early leg work will avoid situations where the district or its insurer and legal counsel are continually attempting to gather information as a complaint is processed. Legal advice may be necessary to ensure all defenses are asserted at the earliest possible opportunity.

B. U.S. Equal Employment Opportunity Commission.

1. **Authority.** The EEOC is responsible for enforcing various federal laws including:

   a) Title VII;
   b) Pregnancy Discrimination Act;
   c) Equal Pay Act
   d) Age Discrimination in Employment Act;
   e) Title I of the Americans with Disabilities Act; and
   f) Genetic Information Nondiscrimination Act.

2. **Charge of Discrimination.** An employee may file a charge of discrimination with the EEOC if the employee believes his or her employer has discriminated against him or her under any of the above laws. To be timely, a complaint must be filed within 300 days of the alleged discrimination. The employee is called a "Charging Party."

3. **Notification from the EEOC.** The EEOC will notify an employer against whom a charge of discrimination is filed within ten days. The employer is called a "Respondent." When the EEOC notifies the Respondent of the charge, it will offer the Respondent an opportunity to participate in mediation with the Charging Party.

4. **Position Statement.** If a Respondent declines to participate in mediation, then the EEOC will proceed with investigating the charge of discrimination. As part of the investigation process, the Respondent must submit a position statement responding to the allegations in the Charge within twenty days. The EEOC will provide the Respondent's position statement to the Charging Party who will be able to submit a response with twenty days.

5. **Investigation.** After receiving the Respondent's position statement, the EEOC may conduct an investigation of the charge of discrimination. As part of its investigation, the investigator may interview witnesses and may request additional records and information. At the conclusion of the investigation, the EEOC will make a reasonable cause determination and issue either a Dismissal and Notice of Rights or a Letter of Determination.

    a) **Dismissal and Notice of Rights. If the** EEOC determines that there is not reasonable cause to believe that discrimination has occurred, it will issue a Dismissal and Notice of Right to Sue.

    b) **Letter of Determination.** If the EEOC determines there is reasonable cause to believe discrimination occurred, they will issue a Letter of Determination stating the reasons they believe that discrimination occurred and inviting the parties to seek a resolution through an informal conciliation process.

6. **Timeline.** The EEOC is supposed to complete its investigation and issue its probable cause determination within 180 days of receiving a charge of discrimination, but it frequently takes much longer.

7. **Lawsuit by EEOC.** If conciliation does not succeed in resolving the charge, the EEOC may file a lawsuit in federal court.

8. **Lawsuit by Charging Party.** If the EEOC determines that there is no probable cause to believe that discrimination has occurred or if the EEOC decides not to file a lawsuit, it will issue a Notice of Right to Sue to the Charging Party. At that time, the Charging Party may sue their employer.

After receiving a Notice of Right to Sue, the Charging Party has ninety days to initiate a civil action.

C. U.S. Department of Education's Office for Civil Rights

1. **Authority.** OCR is responsible for enforcing various federal laws including:
2.
    a) Title VI;
    b) Title IX;
    c) Section 504 of the Rehabilitation Act;
    d) Age Discrimination Act;
    e) Title II of the Americans with Disabilities Act; and
    f) Equal Access Act.

3. **Discrimination Complaint.** An individual who believes that a school district has discriminated against them under any of the aforementioned laws may file a discrimination complaint with OCR. A complaint must be filed within 180 days of the alleged discrimination. OCR conducts an initial evaluation of all complaints and may either summarily dismiss the complaint or may open an investigation.

4. **Facilitated Resolution Between the Parties.** OCR offers Facilitated Resolution Between the Parties (FRBP) as a way to resolve a complaint early on in the investigation process. FRBP is similar to mediation. It is voluntary so both parties must agree to participate. In addition, OCR must approve the case for FRBP and does not do so for all complaints. If a school district is interested in FRBP, it should reach out to OCR as soon as it can after receiving the complaint or OCR will likely deem the case ineligible for FRBP.

    a) Agreements reached during FRBP are unique because they are only between the parties; OCR is not also a party to the agreement. OCR does not monitor these agreements.

5. **Narrative Response.** If the parties opt not to participate in FRBP, a school district must respond to a complaint filed within fifteen days. The district must submit a narrative response addressing the allegations in the complaint and often must respond to specific requests for records and/or information submitted by OCR.

6. **Investigation.** If OCR conducts an investigation of the complaint, it may interview witnesses and request additional records and information from

the school district.

7. **Timeline.** Like the EEOC, OCR must complete its investigation within 180 days of receiving the complaint. Unlike the EEOC, OCR typically adheres to this timeline.

8. **Resolution Agreement.** Prior to the conclusion of its investigation, a school district may voluntarily enter into a resolution agreement with OCR. Similar to FRBP, OCR must determine that a resolution agreement is appropriate based on the circumstances of the particular case. A resolution agreement is between the school district and OCR, and OCR will monitor the district's compliance with the agreement.

9. **Letter of Findings.** At the conclusion of its investigation, OCR will issue a Letter of Findings. In its Letter, OCR will notify the school district if there is sufficient evidence to conclude that the school district failed to comply with the law as claimed in the complaint. If OCR determines that there is sufficient evidence to conclude that a school district violated the law and the school district has not entered into a resolution agreement, then OCR may proceed with terminating the district's federal funding or may refer the case to the U.S. Department of Justice.

10. **Lawsuit by Complainant.** The complainant may initiate a lawsuit against a school district for the conduct that is the subject of the discrimination complaint, regardless of whether OCR finds sufficient evidence to believe that a violation of the law has occurred.

D. Minnesota Department of Human Rights

1. **Authority.** MDHR is responsible for enforcing the Minnesota Human Rights Act which prohibits discrimination in employment and in public education.

2. **Charge of Discrimination.** A "Charging Party" may file a charge of discrimination with MDHR if the Charging Party believes that a school district has engaged in unlawful discrimination. A charge must be filed within one year of alleged discrimination.

3. **Mediation.** Once MDHR receives a charge of discrimination, it will notify the school district of the charge. At that time, it will offer to have the district participate in its voluntary mediation program.

4. **Response.** If a school district opts not to participate in MDHR's

mediation program, it must file a response to the charge of discrimination within twenty days of receiving the charge.

5. **Investigation.** If MDHR proceeds with an investigation of the charge, it will likely conduct interviews of witnesses and may also request additional records and information.

6. **Timeline.** MDHR is supposed to conclude its investigation and issue a probable cause determination within twelve months, but it typically takes much longer to resolve a charge.

7. **Probable Cause Determination.**

   a) If the MDHR ultimately finds probable cause that discrimination occurred, it may refer this matter to the Minnesota Attorney General's Office for litigation either in Minnesota District Court or before the Minnesota Office of Administrative Hearings.

   b) If the MDHR dismisses the charge without a finding of probable cause, the Charging Party has the right to initiate her own lawsuit within forty-five days of the dismissal of the charge. The Charging Party may also internally appeal the decision within thirty days.

8. **Conciliation.** MDHR also offers a conciliation program, much like its mediation program, to resolve charges where probable cause for discrimination has been found. The program is voluntary. Through the program, the school district may enter into an agreement with the Charging Party and MDHR.

II. QUESTIONS?

RASWM: 228450