

MEMORANDUM

The Minnesota Department of Human Rights has completed its investigation of the above-entitled matter. Based upon the results of that investigation, the Commissioner makes the following determination:

1. Evidence was sufficient to conclude that there is **PROBABLE CAUSE** to credit the charging party's allegations of unfair discriminatory practices by the respondent, as prohibited by Minnesota Statutes, section 363A.12 and section 363A.13.
2. The charging party is a transgender (male-to-female) female who has been enrolled intermittently as a student at the respondent's institution since April 11, 2010. On or about September 14, 2010, the charging party enrolled in the respondent's Student Health Benefit Plan, which caters to undergraduate respondent students who are enrolled in degree programs. The material facts in this case are undisputed: The charging party is a transgender female who wanted to use to the respondent's Plan for treatment related to Gender Identify Disorder ("GID") and such treatment is one of the 91 exclusions contained in the respondent's Plan. The charging party argued that the respondent's Plan discriminates based on sexual orientation, as the Plan excludes services that would be used only by transgender individuals. The charging party further argued that this Plan exclusion is analogous to the exclusion of pregnancy-related benefits referenced in *Minnesota Mining and Mfg. Co. vs. State*, 289 N.W. 2nd 396 (Minn. 1979). The respondent argued that the Plan's exclusion of treatment related to GID is based on financial considerations and not on any discriminatory animus against transgender individuals. The respondent also argued that the exclusion of sex reassignment surgery services under the Plan does not prevent or exclude the charging party from receiving either education benefits or healthcare benefits offered by the respondent to its students. Finally, the respondent has noted that its proposed 2012-2013 Plan will cover GID-related treatment.
3. The issue for resolution is whether the exclusion of GID-related treatment from the respondent's Student Health Benefit Plan discriminated against the charging party based on sexual orientation in the area of education or in the area of public services.
4. The Human Rights Act, at section 363A.12, prohibits discrimination in the area of public services based on sexual orientation and certain other protected classes. The Human Rights Act, at section 363A.13, prohibits discrimination in the area of education based on sexual orientation and certain other protected classes.
5. The charging party argued that the respondent's exclusion of treatment related to GID is analogous to 3M's exclusion of pregnancy-related benefits, as referenced in *Minnesota Mining and Mfg. Co. vs. State*, 289 N.W. 2nd 396 (Minn. 1979). The charging party specifically argued that as 3M discriminated against women based on sex by excluding pregnancy-related benefits from its healthcare plan, the respondent has engaged in discrimination based on sexual orientation against transgender individuals by excluding GID-related treatment from its Student Health Benefit Plan. The respondent has denied that its Plan discriminates based on sexual orientation and even noted that its proposed 2012-2013 Plan will include GID-related treatment.

6. Evidence in this case did not show that the respondent's exclusion of GID-related treatment was motivated by any intent to discriminate against transgender individuals based on sexual orientation. In addition, the department found the respondent's concerns regarding the costs of GID-related treatment to be credible. Nonetheless, the department found *Minnesota Mining and Mfg. Co. vs. State* to be apposite authority, as the charging party has argued. Specifically, the department believes that the charging party was correct in reasoning that as 3M discriminated against women based on sex by excluding pregnancy-related benefits from its healthcare plan, the respondent has engaged in discrimination based on sexual orientation against transgender individuals by excluding GID-related treatment from its Student Health Benefit Plan. This reasoning is correct regardless of the respondent's financial concerns and apparent good intentions in contemplating the inclusion of GID-related treatment in its proposed 2012-2013 Plan; while the respondent's financial concerns and apparent good intentions are moving, they do not change the fact that as 3M's erstwhile healthcare plan discriminated against women based on sex by excluding pregnancy-related benefits (a class of benefits that would be used only by women), the respondent's Plan discriminated against transgender individuals based on sexual orientation by excluding GID-related treatment (a type of treatment that would be used only by transgender individuals). Therefore, the department has concluded that the respondent's Plan discriminated against the charging party based on her sexual orientation.