

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ANOKA

TENTH JUDICIAL DISTRICT

N.H.,

Court File No. 02-CV-19-922

Plaintiff,

Case Type: Discrimination

Hon. Jenny Walker Jasper

and

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

SETTLEMENT AGREEMENT

Plaintiff-Intervenor,

vs.

Anoka-Hennepin School District No. 11,

Defendant.

This Settlement Agreement (“Agreement”) is entered into and between Plaintiff N.H., Plaintiff-Intervenor Rebecca Lucero, Commissioner of the Minnesota Department of Human Rights (“Commissioner”), and Defendant Anoka-Hennepin School District No. 11 (“Anoka-Hennepin School District”) (collectively “the Parties”).

WHEREAS, N.H. was a student enrolled in the Anoka-Hennepin School District during the 2015-2016 and 2016-2017 school years;

WHEREAS, following the 2016-2017 school year, J.H. filed a charge of discrimination with the MDHR against the Anoka-Hennepin School District on behalf of her then-minor transgender son, N.H, alleging that the Anoka-Hennepin School District discriminated against N.H. in violation of the Minnesota Human Rights Act, Minn. Stat. ch. 363A (“MHRA”).

WHEREAS, the Minnesota Department of Human Rights (“MDHR”) began investigating the allegations asserted in J.H.’s charge;

WHEREAS, on or about February 25, 2019, J.H. commenced a lawsuit against Anoka-Hennepin School District filed in Anoka County District Court, Case No. 02-CV-19-922 (“Lawsuit”), thereby withdrawing the charge filed with MDHR;

WHEREAS, J.H. alleged in part in the Lawsuit that the Anoka-Hennepin School District deprived N.H. of full and equal access to the public schools (including specifically the boys’ locker room) in violation of the MHRA and equal protection rights under the Minnesota Constitution and, as a result, N.H. was denied educational opportunities and suffered emotional

distress. The complaint also sought declaratory and injunctive relief. The complaint did not allege N.H. suffered personal injuries as a result of the alleged discrimination, or that the alleged discrimination aggravated or compounded any pre-existing medical conditions.

WHEREAS, N.H. was substituted as the Plaintiff;

WHEREAS, the Commissioner intervened in the Lawsuit pursuant to the Court's August 5, 2019 Order to bring claims alleging the Anoka-Hennepin School District violated the MHRA, as set forth in the Commissioner's Complaint in Intervention; and the Commissioner sought damages for Plaintiff, and declaratory and injunctive relief, and the District answered the Complaint in Intervention and denied the Commissioner's claims;

WHEREAS, the district court denied Anoka-Hennepin School District's motion to dismiss the claims set forth in N.H.'s Complaint and granted Anoka-Hennepin School District's and N.H.'s motion to certify two questions for appellate review as important and doubtful. The court of appeals rephrased the certified questions, answered them in the affirmative, affirmed the district court's denial of Anoka-Hennepin School District's motion to dismiss, reversed the district court's application of strict scrutiny as opposed to intermediate scrutiny, and remanded for proceedings consistent with its opinion. More specifically, the court of appeals held (i) a transgender student who is denied use of a locker room that is available to students of the gender with which the student identifies and to which the student has socially transitioned states a claim upon which relief can be granted of sexual orientation discrimination under Minn. Stat. § 363A.13, subd. 1 (2018), (ii) the intermediate scrutiny standard applies to an equal-protection claim of sexual-orientation discrimination under article I, section 2 of the Minnesota Constitution, and (iii) a transgender high-school student who is denied use of a locker room that is available to students of the gender with which the student identifies and to which the student has socially transitioned states a claim upon which relief can be granted of an equal-protection violation under article I, section 2 of the Minnesota Constitution;

WHEREAS, the Parties have reached an agreement to resolve this matter to avoid the burden and expense of further litigation between the Parties and the Parties wish to resolve their dispute in an amicable manner. In agreeing to these terms, N.H., the Commissioner, and the Anoka-Hennepin School District, acting by and through their counsel, engaged in arms' length negotiations and a significant exchange of information. The parties have obtained sufficient information to reliably assess the relative merits and the claims and defenses. Throughout this process, N.H., the Commissioner, and the Anoka-Hennepin School District were represented by counsel knowledgeable in these areas of the law;

NOW, THEREFORE, IN CONSIDERATION OF the mutual promises and covenants contained in this Agreement, including the relinquishment of certain legal rights, the Parties now agree as follows:

1. **Compliance with Act.** The Anoka-Hennepin School District reaffirms its commitment to comply with the MHRA.

2. **Policy, Training, Documentation, Monitoring, and Reporting.** In consideration for the Release of All Claims contained in this Agreement, and as an inducement for the Commissioner and N.H. to enter into this Agreement, the Anoka-Hennepin School District agrees to the following:

- a. **Policy.** Within thirty (30) calendar days of the Effective Date of this Agreement, the Anoka-Hennepin School District shall develop and adopt written policies addressing its obligations to students under the MHRA, or if policies already exist, the Anoka-Hennepin School District will review and revise its policies as needed to ensure compliance with the MHRA and this Agreement, as follows:
 1. The Anoka-Hennepin School District agrees to develop and adopt a written policy, or modify an existing policy to include a provision, that specifically addresses the use of and access to facilities, such as restrooms and locker rooms, by transgender and gender non-conforming students. The policy must allow every student, including transgender and gender non-conforming students, to use any and all facilities consistent with their gender identity. The policy must also specify that the Anoka-Hennepin School District cannot require transgender and gender non-conforming students to use individual-user and/or otherwise separate facilities unless every student is required to do so. In addition, this policy must either include and provide for an internal complaint procedure and a prohibition on reprisal, or expressly and clearly reference an existing internal complaint procedure policy that includes a prohibition on reprisal, for students who believe their rights have been violated to make complaints. Either this policy or the referenced existing internal complaint procedure policy must note that individuals may contact the Minnesota Department of Human Rights (“MDHR”) if they believe they have been discriminated against.
 2. The Anoka-Hennepin School District agrees to include in its policy guidance (to be published on its website and in the student handbook beginning in the 2021-22 school year) a statement that affirms that students of all gender identities are valued and welcome in the Anoka-Hennepin School District community.

Within sixty (60) days of the Effective Date of this Agreement, the Anoka-Hennepin School District will submit the policy to the Commissioner at settlementmonitoring.mdhr@state.mn.us or via First Class U.S. Mail at 540 Fairview Avenue North, Suite 201, St. Paul, MN 55104, for review. If MDHR objects to the proposed or revised policy, the Anoka-Hennepin School District will submit further revisions that address the objections to MDHR’s satisfaction within ten (10) days of receiving MDHR’s objections.

The Anoka-Hennepin School District shall publish the revised policy adopted pursuant to this Agreement; provide the policy to all students, faculty, staff, and

school district officials; make the policy available in a format accessible to viewers on all public-facing and internal school websites; and provide MDHR with verification that the policy was distributed and published. The Anoka-Hennepin School District shall also provide MDHR with the URL for the website posting of the policy guidance published pursuant to Paragraph 2(a)(2) within sixty (60) days of the Effective Date of this Agreement. The Anoka-Hennepin School District shall also provide MDHR with a copy of the student handbook that includes the policy guidance pursuant to Paragraph 2(a)(2) within thirty (30) days of the start of the 2021-22 school year.

For a period of four (4) school years from the Effective Date of this Agreement, ending at the conclusion of the 2023-2024 school year on June 15, 2024, the Anoka-Hennepin School District agrees to submit any proposed modifications to the policy and to the affirming statement in the policy guidance published pursuant to Paragraph 2(a)(2), to MDHR for review prior to making any modifications. Such submissions shall be sent to the Commissioner of Human Rights at settlementmonitoring.mdhr@state.mn.us or via First Class U.S. Mail at 540 Fairview Avenue North, Suite 201, St. Paul, MN 55104. The Commissioner shall have sixty (60) days from the receipt of any such proposed modifications to provide written feedback or it shall be presumed that the Commissioner has no proposed modifications.

- b. **Training.** The Anoka-Hennepin School District agrees to provide training to ensure compliance with the MHRA and this Agreement, as follows:
 1. **Staff training.** As soon as practicable and before the end of the 2020-2021 school year, the Anoka-Hennepin School District agrees to train all members of the school board, school district officials and leadership, faculty, and staff on the Anoka-Hennepin School District's obligations under the MHRA, with an emphasis on the policies created and/or modified pursuant to this Agreement.

On an annual basis for the next three (3) school years from the Effective Date of this Agreement, beginning with the 2021-2022 school year and ending at the conclusion of the 2023-2024 school year on June 15, 2024, the Anoka-Hennepin School District agrees to annually train all members of the school board, school district officials and leadership, faculty, and staff, on the Anoka-Hennepin School District's obligations under the MHRA, with an emphasis on the policies set forth above.

If a school board member, school district official, faculty, or staff joins the Anoka-Hennepin School District following the annual training for that academic year, that person must be trained within thirty (30) days following the start of their employment and/or position.

2. **Student training.** As soon as practicable and before the end of the 2020-2021 school year, the Anoka-Hennepin School District agrees to train all students on the Anoka-Hennepin School District's obligations under the MHRA and students' rights under the MHRA, with an emphasis on the policies created or modified pursuant to this Agreement, and to provide students with such policies in writing to inform them of the Anoka-Hennepin School District's obligations under the MHRA and students' rights under the MHRA.

On an annual basis for the next three (3) school years from the Effective Date of this Agreement, beginning with the 2021-2022 school year and ending at the conclusion the 2023-2024 school year on June 15, 2024, the Anoka-Hennepin School District agrees to annually train all students on the Anoka-Hennepin School District's obligations under the MHRA and students' rights under the MHRA, with an emphasis on the policies set forth above, and to annually provide students with such policies in writing to inform them of the Anoka-Hennepin School District's obligations under the MHRA and students' rights under the MHRA.

Within thirty (30) days after completing the training set forth above, for a period of four (4) school years ending at the conclusion of the 2023-2024 school year on June 15, 2024, the Anoka-Hennepin School District shall submit to MDHR verification that the trainings have been completed. This verification requirement includes the training provided to school board members, school district officials, faculty, or staff who join the Anoka-Hennepin School District following the annual training for that year. Regarding students, the Anoka-Hennepin School District shall also submit to MDHR verification that policy has been provided to students, including the date(s) the policy was provided and how the information was communicated to students. The Anoka-Hennepin School District shall submit the verifications to the Commissioner at settlementmonitoring.mdhr@state.mn.us or via First Class U.S. Mail at 540 Fairview Avenue North, Suite 201, St. Paul, MN 55104. MDHR will have thirty (30) days from receipt of the verification(s) to notify the Anoka-Hennepin School District of any concerns with the training and/or its reporting, to which the Anoka-Hennepin School District will be obligated to resolve the concerns within thirty (30) days.

- c. **Documentation, Reporting, and Monitoring.** For a period of four (4) school years following the Effective Date of this Agreement, ending at the conclusion of the 2023-2024 school year on June 15, 2024, the Anoka-Hennepin School District agrees to contemporaneously document in writing the following regarding any complaint brought under the policy set forth above in Paragraph 2(a)(1): the full name and contact information of the complainant, (2) the nature of the complaint, (3) the Anoka-Hennepin School District's response to the complaint, (4) the outcome and/or resolution of the complaint, and (5) any other information

necessary to show the Anoka-Hennepin School District's compliance with the MHRA and its policy set forth above in Paragraph 2(a)(1).

For a period of four (4) school years ending at the conclusion of the 2023-2024 school year on June 15, 2024, the Anoka-Hennepin School District agrees to report to MDHR annually within 30 days of the last day of student instruction: (1) the number of complaints made to the Anoka-Hennepin School District under the policy set forth above in Paragraph 2(a)(1), (2) the Anoka-Hennepin School District's response to the complaint(s), (3) the outcome and/or resolution of the complaint(s), and (4) any other information necessary to show the Anoka-Hennepin School District's compliance with the MHRA and its policy set forth above in Paragraph 2(a)(1). Upon review of these submissions, MDHR may request additional information regarding specific complaints identified in each report. The Anoka-Hennepin School District shall produce to MDHR the requested information, including private student information. Upon request of the Anoka-Hennepin School District, MDHR can seek to subpoena the requested information, including private student information, utilizing its subpoena power consistent with Minn. Stat. § 363A.06, subd. 2.

3. **Settlement Payment to N.H.** On or before the date the Parties file a Joint Stipulation of Dismissal with Prejudice with the Court dismissing the Lawsuit, and no later than 30 days after the parties fully-execute this Agreement, Hanover Insurance Company (the "Insurer"), on behalf of Anoka-Hennepin School District, shall make settlement payments totaling the amount of \$300,000.00 ("Settlement Payment") as outlined below, in full and final satisfaction of N.H.'s claims. The Settlement Payment shall be made as follows: (1) \$110,000.00 paid by wire transfer to Stinson, LLP's IOLTA trust account per bank wiring instructions to be provided to counsel for Anoka-Hennepin School District, and (2) \$190,000.00 paid to MetLife Assignment Company, Inc. to fund a structured settlement annuity that will provide periodic payments made according to the schedule as follows (the "Periodic Payments"): PAYEE: N.H., \$1,000.00 per month for eighteen (18) years and three (3) months (219 payments) guaranteed, commencing June 1, 2021, with the last guaranteed payment on August 1, 2039.

Within sixty (60) days of the Effective Date of this Agreement, the Anoka-Hennepin School District will send verification that it has fulfilled its payment obligation, to MDHR at settlementmonitoring.mdhr@state.mn.us, or via First Class U.S. Mail at 540 Fairview Avenue North, Suite 201, St. Paul, MN 55104.

4. **Rights to Periodic Payments:** N.H. acknowledges that the Periodic Payments cannot be accelerated, deferred, increased or decreased by N.H. or any Payee; nor shall N.H. or any Payee have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.

5. **Consent to Non-Qualified Assignment:** N.H. acknowledges and agrees that the Insurer will make a "Non-Qualified Assignment" of the Insurer's liability to make the Periodic Payments as specified pursuant to paragraph 3 above to MetLife Assignment Company, Inc. (the "Assignee"). The Assignee's obligation for payment of the Periodic Payments shall be no greater

than that of the Insurer immediately preceding the assignment of the Periodic Payments obligation.

Any such assignment, when made, shall be accepted by N.H. without right of rejection and shall completely release and discharge Anoka-Hennepin School District and the Insurer from the Periodic Payments obligation assigned to the Assignee. N.H. recognizes that, in the event of such an assignment, the Assignee shall be the sole obligor with respect to the Periodic Payments obligation, and that the release herein with respect to the Periodic Payments obligation that pertains to the liability of Anoka-Hennepin School District and the Insurer, thereupon become final, irrevocable and absolute.

6. **Right to Purchase an Annuity:** The Insurer, itself or through its Assignee, shall fund the liability to make the Periodic Payments through the purchase of an annuity policy from Metropolitan Tower Life Insurance Company (the "Annuity Issuer"). The Assignee shall be the sole owner of the annuity policy and shall have all rights of ownership. The Assignee may have the Annuity Issuer mail payments directly to the Payee. The Payee shall be responsible for maintaining a current mailing address with Annuity Issuer.

7. **Beneficiary:** Any payments to be made after the death of any Payee pursuant to the terms of this Agreement shall be made to such person or entity as shall be designated in writing by Payee to the Assignee. If no person or entity is so designated by Payee, or if the person designated is not living at the time of the Payee's death, such payments shall be made to the estate of the Payee. No such designation, nor any revocation thereof, shall be effective unless it is in writing and delivered to the Assignee. The designation must be in a form acceptable to the Assignee before such payments are made.

8. **Discharge of Obligation:** The obligation of the Assignee to make each Periodic Payment shall be discharged upon mailing of a valid check or electronic funds transfer in the amount of such payment on or before the due date to the last address or bank account on record for the Payee named herein. If the Payee or designated beneficiary notifies the Assignee that any check or electronic funds transfer was not received, the Assignee shall direct the Annuity Issuer to initiate stop payment action and, upon confirmation that the check was not previously negotiated or electronic funds transfer deposited, the Annuity Issuer shall process a replacement payment in the amount of such payment to the designated address or bank account of the Payee.

9. **Mediation Expenses.** The Anoka-Hennepin School District and/or its Insurer agrees to pay the Commissioner's, MDHR's, and N.H.'s shares of all fees and costs associated with the Mediator, the Honorable Arthur J. Boylan, preparing for and conducting the February 3, 2021 mediation of the Commissioner's claims and N.H.'s claims against the Anoka-Hennepin School District (the "Mediation Fee"). The Commissioner, MDHR, and N.H. shall have no responsibility for any portion of the Mediation Fee.

10. **Government Data.** The Parties acknowledge that the release of information concerning this matter from the files of MDHR is governed by the MHRA, Minn. Stat. ch. 363A; the Minnesota Government Data Practices Act, Minn. Stat. ch. 13; and the Official Records Act, Minn. Stat. §§ 15.17, *et seq.* The Parties agree that the terms of this Agreement are public

pursuant to Minn. Stat. § 363A.06, subd. 4. The Parties agree that the information identified as public data in Minn. Stat. § 363A.35, subd. 3 is public following the closure of this file.

11. **Release of All Claims.** In consideration for the payments outlined in Paragraphs 3 and 9, and the policy, training, documentation, reporting, and monitoring requirements outlined in Paragraph 2, and as an inducement for the Anoka-Hennepin School District to enter into this Agreement, all Parties agree that this is a full, final, and complete settlement, compromise, and satisfaction of (a) the Commissioner's claims against the Anoka-Hennepin School District pending in the Lawsuit and (b) any and all claims of any kind by N.H. against the Anoka-Hennepin School District, whether known or unknown, asserted or unasserted, from the beginning of time to the Effective Date of this Agreement. The Commissioner (on her own behalf and on behalf of MDHR), N.H., and the Anoka-Hennepin School District hereby waive, release, discharge, and covenant not to sue each of the other parties to this Agreement, their current and former officers, agents, or employees, successors and assigns, with respect to any claims, suits, or damages contained in the charge of discrimination and in the complaints filed in the Lawsuit, including any claim for costs or attorneys' fees and, as to N.H., any and all claims of any kind, whether known or unknown, asserted or unasserted, from the beginning of time to the Effective Date of this Agreement. Nothing contained herein, however, shall be construed as limiting the right of any party to this Agreement to take further action if another party fails to comply with this Agreement.

12. **Claims Not Waived by the Commissioner.** The Parties to this Agreement acknowledge that by signing this Agreement, the Commissioner, on behalf of herself and MDHR, does not release or waive the following: (a) any rights or claims based on any events that occur after the Commissioner signs this Agreement; (b) any claims that are unrelated to the allegations underlying the Commissioner's Complaint in Intervention and the Lawsuit; (c) MDHR's right to bring, process, investigate, or litigate other charges that may currently be pending before it or may arise later against the Anoka-Hennepin School District; and (d) any right to institute legal action for the purpose of enforcing this Agreement.

13. **Rescission under the MHRA.** The Parties agree that N.H.'s, the Commissioner's, and MDHR's release of claims is given in settlement of the Lawsuit. In accordance with the provisions of Minn. Stat. § 363A.31, subd. 2 (2018), N.H.'s, the Commissioner's, and MDHR's release of claims under the MHRA will become final upon the Effective Date of this Agreement.

14. **Dismissal of Lawsuit.** The Parties agree to dismiss the Lawsuit with prejudice following the Effective Date of this Agreement, the Insurer's payment of the Settlement Payment outlined above, the Insurer's funding and "Non-Qualified Assignment" of its obligation to make the Periodic Payments, and the Insurer's payment of the Mediation Fee. The Parties, individually or by their counsel, shall execute a joint stipulation to dismiss the Lawsuit with prejudice and cause it to be filed with the Anoka County District Court.

15. **Responsibility for Costs.** The Parties agree that with the exception of the Settlement Payment and the Mediation Fees described in this Agreement, the Parties are not entitled to and shall not seek from any court or from any other Party any other monetary relief or

compensation, including additional damages or other fees, costs, expenses, or disbursements in connection with the Lawsuit; and that, except to the extent stated in this Agreement, the Parties are responsible for their own fees, costs, and expenses.

16. **Voluntary Agreement.** The Parties acknowledge that no person has exerted undue pressure on them to sign this Agreement. Each Party is voluntarily choosing to enter into this Agreement after arms-length negotiations and a significant exchange of information because of the benefits that are provided under this Agreement. The Parties acknowledge that they have read and understood the terms of this Agreement, that they have been represented by legal counsel knowledgeable in this area of the law, and that they are voluntarily entering into this Agreement to resolve the dispute among them.

17. **Choice of Law, Forum, and Severability.** This Agreement is governed by the laws of the State of Minnesota, regardless of N.H.'s domicile or status as a resident of Minnesota or any other state. The Parties agree that Minnesota's state district courts will have exclusive jurisdiction over any dispute arising out of this Agreement. The provisions of this Agreement shall be severable, and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

18. **Enforceability.** The Parties to this Agreement may seek relief in Court regarding this Agreement, including to enforce this Agreement. If the Commissioner of MDHR believes that the Anoka-Hennepin School District has not complied with the requirements of this Agreement, the Commissioner shall follow the procedure set forth in Minn. R. 5000.0800, subp. 3a (2019), by notifying the Anoka-Hennepin School District of its noncompliance by certified mail addressed to General Counsel, Anoka-Hennepin School District, 2727 North Ferry St., Anoka, MN 55303 and Jeanette Bazis, Greene Espel PLLP, 222 South 9th Street, Suite 2200, Minneapolis, MN 55402, and by email addressed to jbazis@greeneespel.com. The Anoka-Hennepin School District shall have fifteen (15) business days after receipt of the notice to respond. After the District's response is delivered to the Commissioner, the Commissioner and the District shall meet and confer within fifteen (15) business days via telephone, videoconference, or in-person meeting regarding any remaining dispute prior to seeking relief from a Court. If, after meeting and conferring, or if the parties are unable to meet and confer within fifteen (15) business days, the Commissioner determines the Anoka-Hennepin School District has not complied with this Agreement, the Commissioner may seek to enforce this Agreement in state district court. This Agreement does not prohibit any party from seeking recovery of its litigation costs and expenses arising from any violation of this Agreement.

19. **Settlement Agreement.** This Agreement is binding. The Parties acknowledge that they have been advised that (1) the other parties have no duty to protect their interest or provide them with information about their legal rights, and (2) signing this Agreement may adversely affect their legal rights.

20. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to N.H.'s claims set forth in N.H.'s Complaint and the Commissioner's claims set forth in the Commissioner's Complaint in Intervention, against the Anoka-Hennepin School

District in the matter of Anoka County District Court File No. 02-CV-19-922. No party has relied upon any statements, promises, or representations that are not stated in this document. No changes to this Agreement are valid unless they are in writing, identified as an amendment to this Agreement, and signed by all Parties. There are no inducements or representations leading to the execution of this Agreement except as herein explicitly stated.

21. **Warranty.** The persons signing this Agreement warrant that they have full authority to enter into this Agreement on behalf of the party each represents, and that this Agreement is valid and enforceable as to that party.

22. **Effective Date and Counterparts.** The Effective Date of this Agreement shall be the date on which it is fully executed by all Parties. This Agreement may be executed in multiple counterparts, which shall be construed together as if one instrument. Any party shall be entitled to rely on an electronic or facsimile copy of a signature as if it were an original. The Parties have caused this Agreement to be signed on the dates opposite their signatures.

Plaintiff N.H.

Dated: 3/10/2021



COMMISSIONER OF THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Dated: _____

By:

Irina Vaynerman, Deputy Commissioner of
the Minnesota Department of Human Rights

ANOKA-HENNEPIN SCHOOL DISTRICT NO. 11

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Plaintiff N.H.

Dated: _____

COMMISSIONER OF THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Dated: 3/9/2021

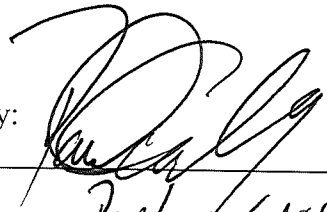
By:

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Irina Vaynerman, Deputy Commissioner of
the Minnesota Department of Human Rights

ANOKA-HENNEPIN SCHOOL DISTRICT NO. 11

Dated: MARCH 8, 2021

By: 

Name: PAUL CARY
(printed)

Title: GENERAL COUNSEL