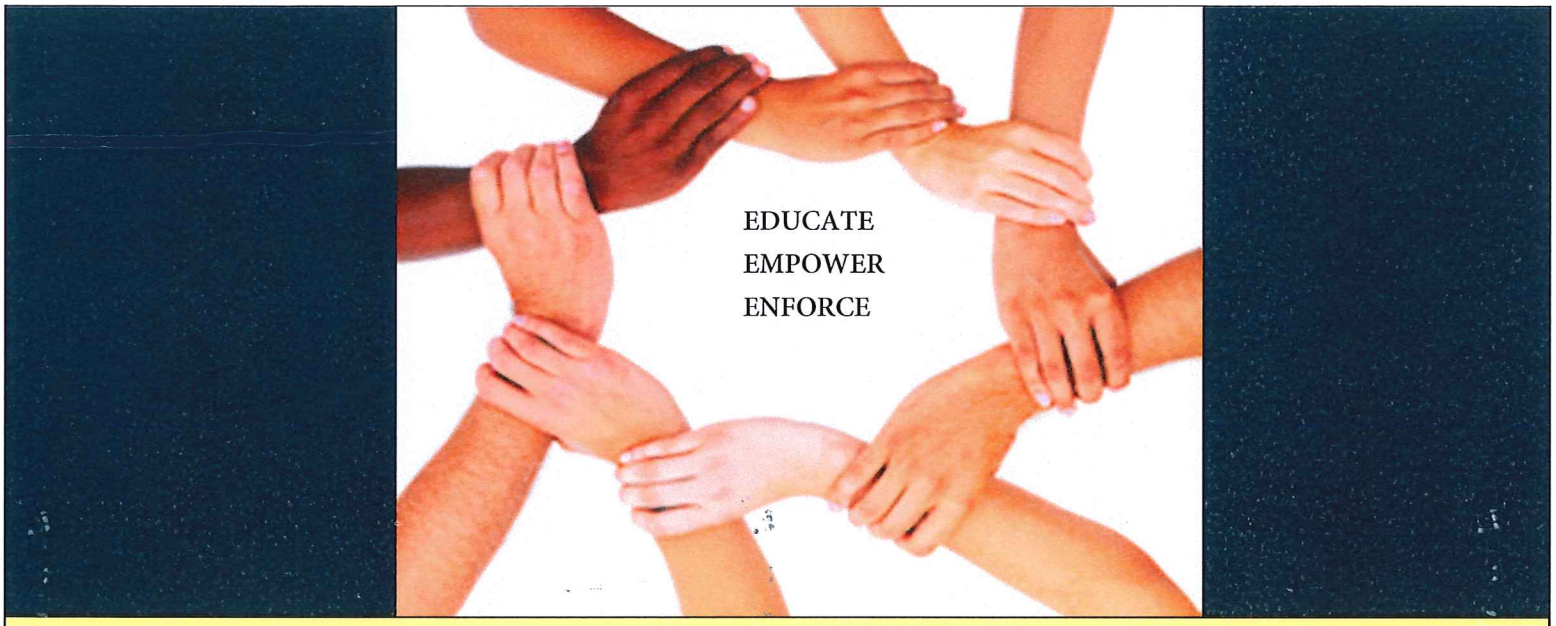
CITY OF FORT WAYNE

METRO

METROPOLITAN HUMAN RELATIONS COMMISSION



2015 ANNUAL REPORT

2015 Board of Commissioners

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Mission Statement

In Fort Wayne you have the right to live, work, learn and play free from illegal discrimination. The Metropolitan Human Relations Commission is focused and committed to creating an environment in the City of Fort Wayne that will produce an inclusive community where trust, acceptance, fairness and equality are the City's norms. The Commission is committed to accomplishing this mission by empowering the citizens of Fort Wayne through education on diversity and discrimination issues and, when necessary, enforcing anti-discrimination laws in order to protect our community from unlawful discrimination and also unfounded allegations of discrimination.

Dear Residents of Fort Wayne, Fort Wayne City Council, and The Honorable Tom Henry:

In this 2015 Letter from the Director, I would like to take the opportunity to explain how Metro investigates allegations of discrimination. A great deal of time and effort has and does go into ensuring that the investigative process is thorough, fair, and timely. The staff puts a tremendous amount of energy into each investigation. I believe it's only fair to explain the process so people can see and hopefully understand how much work the staff does here at Metro.

Metro is complaint driven and is legally obligated to accept all complaints. During the intake process, the first step in the process, an investigator counsels the individual to determine if they are at the correct agency to handle their issue, and if not, determine if there is another local, state or federal agency that could assist them. It is not uncommon for an investigator to spend over an hour with an individual only to discover another agency would be better suited to handle the complaint or to discover the individual just needed to talk a situation out. Taking a quick look at Metro's inquiries, intakes and closures you can see that not everyone that walks through these doors or makes a call files a charge.

In 2015, approximately 754 people contact Metro about an employment issue, approximately 72 people contacted Metro concerning a public accommodation issue, and approximately 18 people contacted Metro about discrimination issues in education. For those issues mentioned above a total of approximately 844 people contacted Metro and 437 of those resulted in a charge filed—approximately fifty-one percent (51%) filed a charge.

In 2015, Metro had approximately 223 phone inquiries or walk-ins concerned with various types of housing issues, not always fair housing. We had a total number of 63 intakes—approximately twenty-eight percent (28%) filed a charge.

During the intake, the individual will be asked to explain to the investigator what they believed to have happened. The investigator will put the information into a written charge. It is important to note that at this point in the process the individual filing the complaint does not have to prove their case. The individual's obligation at this point is to provide as much information as possible so that the investigator can begin the investigation. The charge will be sent to the respondent, the business that a citizen is making the allegations against. The respondent, depending on the type of case, has either ten or twenty days to respond to the charge.

During the entire investigative process, from the time the charge is filed until a hearing officer issues a final order at a public hearing, mediation is offered to both parties. The goal of mediation is to have the parties come to a resolution amongst themselves with the help of Metro's mediation specialist. The mediation specialist is not the investigator but a third party that helps the parties resolve the matter. Mediation is voluntary for both parties. Within the past two years, Metro has placed an emphasis on mediation at the front end of the process before the investigator begins the investigation. One of the primary benefits of mediation at the front end is that it addresses conflicts that may have resulted from a miscommunication or a misunderstanding. In 2015, twenty percent of the employment, education, and public accommodation base closures were successfully mediated and twenty-four percent of the housing case closures were successfully mediated.

If the parties choose not to mediate or the mediation is unsuccessful, the case goes back to the investigator. To give the complainant an opportunity to respond to the respondent's response, a summarized version composed by the investigator is sent to the complainant. The complainant may submit a rebuttal. The next step in the process is for the investigator to physically go onsite to the respondent's place of business. The purpose of the onsite is to give the respondent a face to face opportunity to explain their version of events, verify documents, and talk to witnesses. Metro goes onsite for approximately ninety-eight percent of their investigations.

Judging by the percentage of onsites that Metro investigators conduct; you can tell that we perceive the onsite as an important tool used to conduct investigations. We believe that a more thorough investigation can be conducted with a face to face conversation with the people involved in the allegation, talking to witnesses who deal with complainant and respondent day in and day out, and actually looking at documents and files of the real people who are working there to compare treatment.

We understand that an onsite visit from an investigator may seem disruptive to respondents. We do our very best to make the onsite the least disruptive as possible for respondents. We do that by putting time and energy into preparing for the onsite. The investigators prepare onsite plans for each case and each onsite plan gets reviewed by the staff attorney one-on-one with the investigator. When reviewing the plan, the staff attorney makes sure that we are not asking to talk to more witnesses than is necessary, that we are requesting the correct information the first time, and that we are asking the right questions. Upon return from the onsite, the investigator meets one-on-one again with the staff attorney to discuss.

The next step in the process is unique to Metro. Unlike most other civil rights investigative agencies, the investigators compose a detailed recommendation summarizing the evidence including witness statements, any documents reviewed, and the legal reasons for the determination that both parties have the opportunity to read. It is not unusual for an investigator to spend hours drafting a determination recommendation. The written determination is one of our highest priorities. Even if a person does not agree with the findings, all the information used to make the determination and the reason for the decision is there in the report to review. It is important for both the individual filing the complaint and the respondent to understand the findings of the investigation.

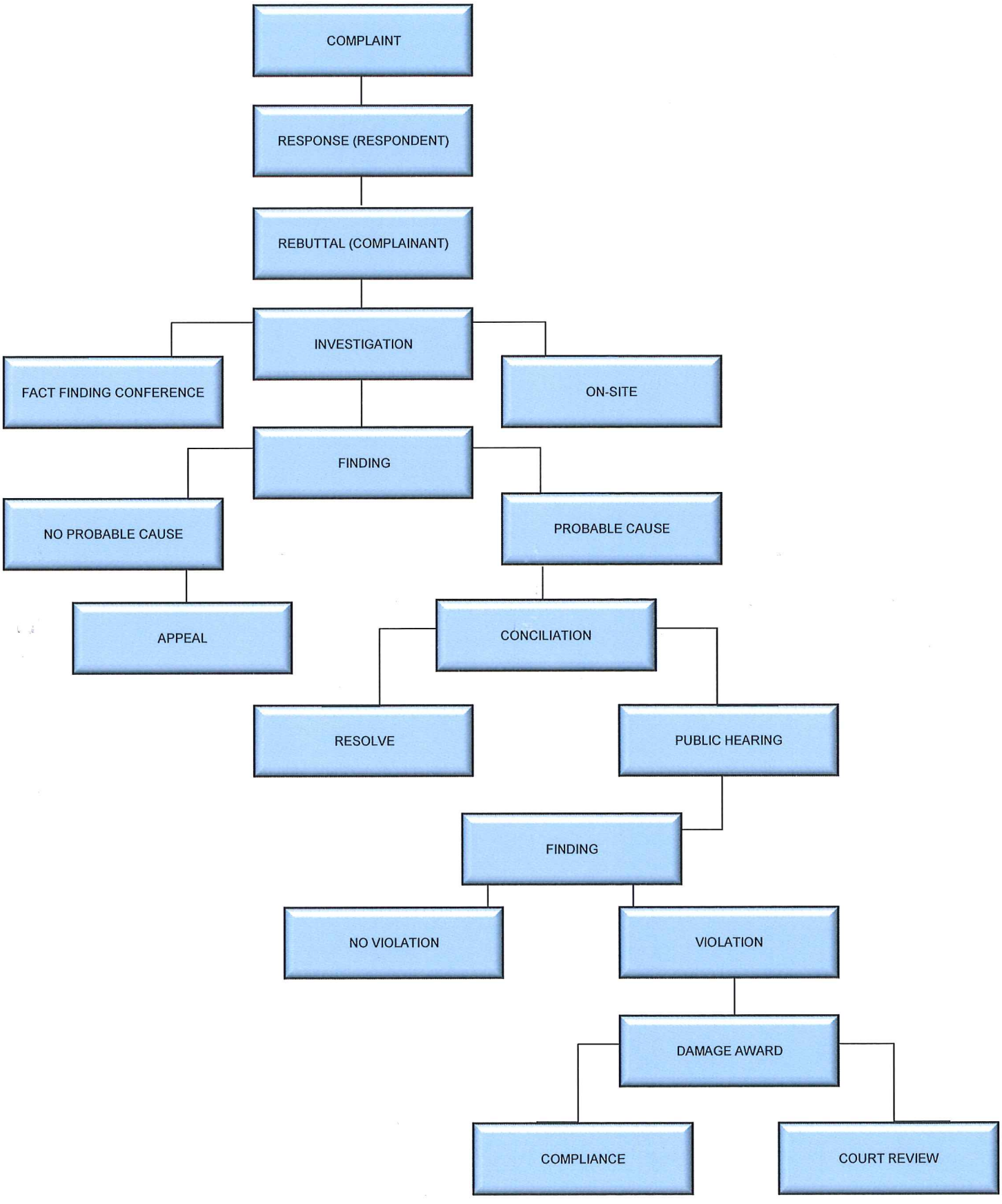
Based on the evidence and the legal framework in the recommendation, the investigator presents the case to one or two of the commissioner (s) who may make a no probable cause finding or a probable cause finding. A no probable cause finding means that there was not enough evidence to suggest that discrimination occurred. This does not mean that an individual was not treated unfairly. It just means that there was not enough evidence to support a legal finding of discrimination. The commissioner (s) may make a probable cause finding which means that evidence suggests that discrimination may have occurred. This does not mean that discrimination occurred. It just means that there is enough evidence to suggest that it may have occurred, and the Commission needs to continue with the case.

In 2015, Metro investigators closed 321 employment, public accommodation, and education cases and 72 housing cases. That comes to approximately, give or take the roughly two percent of the cases that do not require an onsite, 393 onsites, onsite plans, and onsite reviews and 393 written recommendation determinations. In addition, the administrative staff puts their time and effort into support the investigative staff. Just by this short letter one can see that a lot of work is done at Metro and that is not counting the hundreds of hours of outreach conducted in 2015. I am grateful every day that Metro's entire staff is competent, passionate, and enthusiastic enough to carry out this important work.

Sincerely,

Dawn D. Cummings

CASE PROCESSING PROCEDURE



Legal Update
Indiana Senate Bill 101
By: Nikki Quintana

On March 26, 2015, Indiana Governor Mike Pence signed into law Indiana Senate Bill 101 which is the Indiana Religious Freedom Reformation Act ("Indiana RFRA"). The act specifically states, the government cannot "substantially burden" a person's ability to follow their religious beliefs, unless it can prove a compelling governmental interest in imposing that burden and does so in the least restrictive way. Indiana RFRA was created to be similar to the Federal Religious Freedom Restoration Act ("Federal RFRA") passed in 1993; however, there are some substantial differences.

The first difference is that Indiana RFRA explicitly states a corporation is a person that exercises religious beliefs. The Supreme Court in a recent decision, *Burwell v. Hobby Lobby Stores*, interpreted the Federal RFRA to allow some corporate employers, even if for profit to be considered a "person that exercises religion." By Indiana legislature writing it within the act, the government can no longer argue that the RFRA was not meant to protect for-profit corporations. The second difference is that the Indiana law protections may be raised when a person's exercise of religion is "likely" to be substantially burdened by government action, not just when it has been burdened. It is not clear how this change in Indiana law will affect the application of the law, but it is a difference. The third difference is that the act allows the assertion of free exercise rights as a claim or defense in judicial or administrative proceedings even if the government is not a party to the proceedings. The relevant governmental entity has a right to intervene in such cases to respond to the RFRA claim. A remedy under the bill is only available against the government; suits by employees or applicants invoking the law against private employers are precluded.

Soon after signing the Indiana RFRA into law there was an onslaught of people and companies who had problems with how the act was written. The general consensus of those opposing Indiana RFRA was that the act was not completely similar to its Federal counterpart in significant ways and that it would allow for discrimination to the Lesbian, Gay, Bisexual, Transgender, and Queer ("LGBTQ") community. Critics felt that Indiana RFRA would not be in sync with Indiana's motto "Hoosier Hospitality." Specifically, the act was opposed by the National Collegiate Athletic Association (NCAA), Salesforce, Angie's List, GenCon, Apple CEO Tim Cook, Eli Lilly Roche Diagnostics and many more. Some of these organizations went as far as to say they would boycott doing business in Indiana. An example of this was Angie's list who announced that they would cancel a $40 million expansion of their Indianapolis based headquarters due to concerns over the law that would have moved 1000 jobs into the state.

In the face of such disapproval Governor Pence maintained that this law was not about discrimination, but this was about empowering people to confront government overreach. Advocates of the bill felt that it would prevent the government from infringing on people's ability to exercise their religious beliefs. However, with national disapproval of the bill and the idea of businesses and organizations boycotting the state, Governor Pence signed an additional bill on April 2, 2015. The additional bill acted as an amendment intended to protect individuals within the LGBTQ community. Specifically, the bill specifies that the new religious freedom law cannot be used as a legal defense to discriminate against people based on their sexual orientation or gender identity. However, the amendment does not go as far as establishing gays and lesbians as a protected class of citizens statewide or repealing the law outright.

Religious Discrimination in Employment
Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.
135 S. Ct. 2028 (2015)

Abercrombie & Fitch Stores, Inc. is a stylish clothing store. To keep up with its image, the store has a "Look Policy" for its employees. This policy prohibits store employees from wearing "caps."[1] Samantha Elauf, a practicing Muslim, in accordance with her religious beliefs, wears a headscarf. She applied and was interviewed for the position. At no time during the interview did Ms. Elauf speak about her headscarf or her religion. Based upon Abercrombie qualification standards, Ms. Elauf was qualified to be hired; however, the manager was concerned with that Ms. Elauf's headscarf would conflict with the Look Policy. The manager addressed her concerns with the corporate office. The manager did tell corporate that she believed that Ms. Elauf wore the headscarf because of her faith. The manager was directed not to hire Ms. Elauf because Ms. Elauf's headscarf would violate the Look Policy.

The EEOC brought suit on Ms. Elauf's behalf alleging that Abercrombie failed to hire Ms. Elauf because of religion in violation of Title VII. The District Court granted summary judgement in favor of the EEOC, held a trial on damages, and awarded $20,000. The Tenth Circuit Court of Appeals reversed. The Tenth Circuit stated that ordinarily an employer cannot be liable under Title VII for failure to accommodate a religious practice until the applicant (or employee) provides the employer with actual knowledge of his need for an accommodation. In other words, the applicant must first request the accommodation, thus giving the employer "actual knowledge" of the needed accommodation. The EEOC appealed to the United States Supreme Court.

The Late Justice Antonin Scalia described this case as "really easy." There is no "actual knowledge" requirement. A person only needs to show that a need for an accommodation was a **motivating factor** in the employer's decision. Even though Abercrombie had no actual knowledge of Ms. Elauf's religious beliefs, witness testimony clearly showed that Ms. Elauf's "suspected" religious belief was a motivating factor in the decision not to hire her in violation of Title VII. The Supreme Court affirmed the trial court's award of $20,000.

What should employers do?

It is clear that employers are free to make neutral policies, such as a "no caps" policy. However, Title VII gives religious practices "favored treatment," and requires otherwise-neutral policies to give way to the need for an accommodation as long as there is not an undue hardship.

Employers should not be the first to ask questions about religious affiliation or beliefs. Employers should train its management how to ask questions which could possibly identify potential conflicts with neutral policies. Rather than asking "Do you need Saturdays off because you are an orthodox Jew?" management should describe the work requirements and policies, and then ask applicants if they can comply with those policies. If a person says that they cannot comply with those requirements and policies, management should provide an opportunity to that individual to explain. This gives the applicant an opportunity to request an accommodation and assists management in gathering enough information to make a decision as to whether the accommodation is reasonable or whether it would create an undue hardship.

[1] The Look Policy did not define the term "caps."

The Fair Housing Act and the Disparate Impact Theory
Texas Department of Housing & Community Affairs v. The Inclusive Communities Project, Inc.
135 S. 2507 Ct. (2015)

The Disparate Impact Theory has been used in employment cases for decades. In 2013, The Department of Housing and Urban Development ("HUD") issued its disparate impact rule and lower courts have consistently ruled in favor of applying such a theory. All that was left was to hear from the United States Supreme Court. So after decades of waiting, the Supreme Court has spoken. In June, the Supreme Court recognized the disparate impact theory as a relevant legal theory under the FHA. This was a hotly contested issue shown by the 5-4 Supreme Court decision.

Disparate Impact is a legal theory that states that a completely neutral policy as to race, color, gender, familial status, religion, or disability that has an "adverse impact" one of these protected classes when there is no legitimate, non-discriminatory business need for the policy may be considered discriminatory under the FHA. In other words, even if the policy was created with no intent whatsoever to discriminate, the policy can still violate the FHA if it has a discriminatory effect. An example of such a policy could be the following: Landlord creates a policy that does not allow the consideration of child support payments with the income qualifications. Landlord's legitimate non-discriminatory reason is that child supports payments are not consistent and when there are issues receiving the child support they are not rectified quickly. Landlord's experience is that more than likely the individual will be short on rent payment. There is no discriminatory intent. However, this neutral policy has an adverse effect on women with children. Statistics show that to disallow child support as income consideration would lead to a disproportionate amount of women with children being denied housing.

Disparate impact has been used to expand housing opportunities for persons with disabilities, families with children and others protected by the FHA. Without the use of this theory, cities can more easily pass zoning ordinances that prohibit people with disabilities from modifying their homes to make them accessible; condo associations can more easily establish rules that prevent people with disabilities from making reasonable modifications to their homes; landlords can more easily evict victims of domestic violence; lenders can again employ policies and practices that steer borrowers with good credit into high cost, bad mortgages; and apartment managers can establish rules that make housing excessively and prohibitively expensive for families with children.

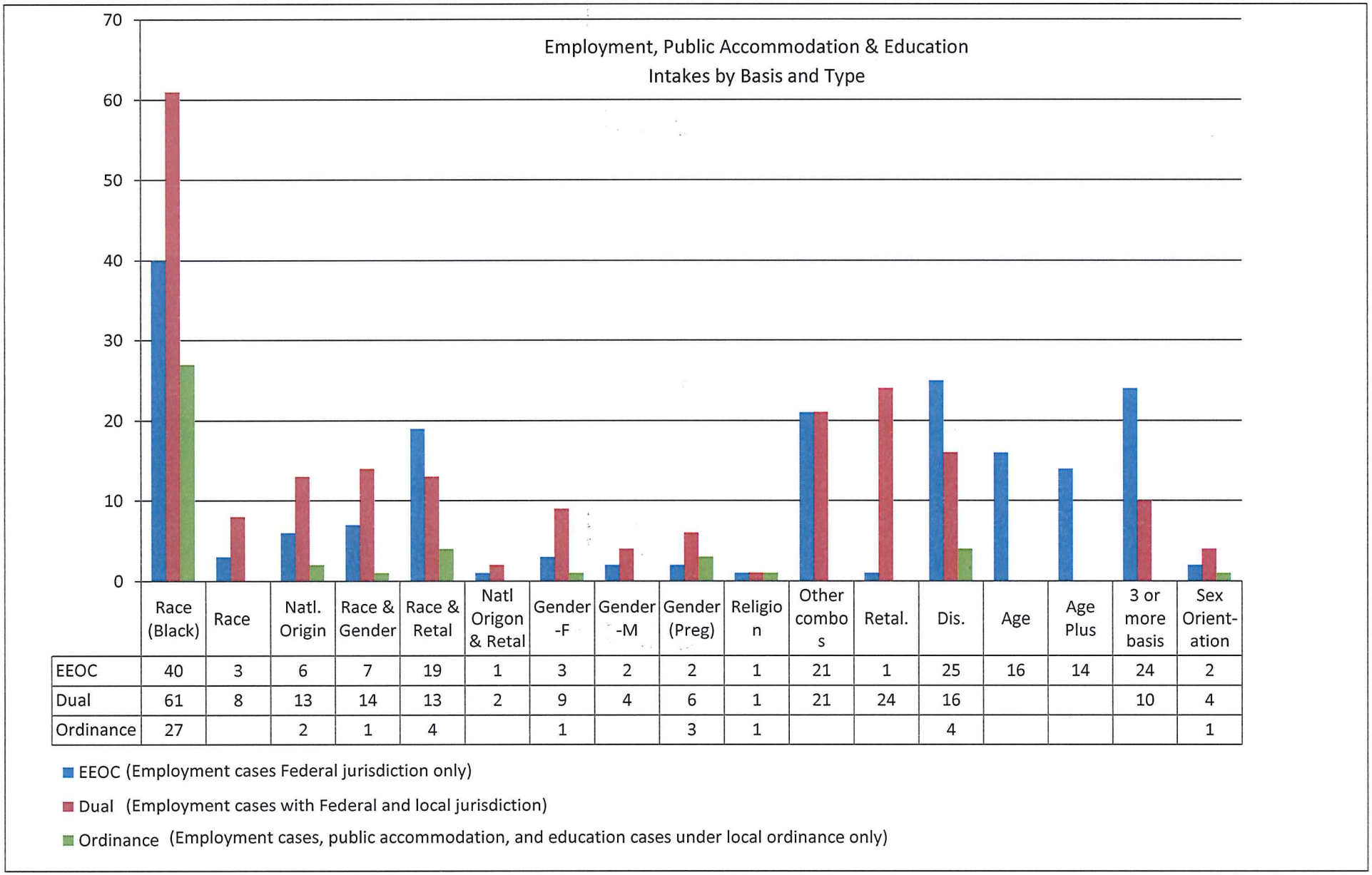
While supporters such as HUD and fair housing organizations see this decision as a "win," there is still much to figure out. Though the Supreme Court's decision also upholds HUD's disparate impact rule which establishes a burden-shifting framework for addressing disparate impact claims, the Court imposed significant limitations on the application of the theory that benefits defendants in FHA cases. You can expect these issues to be played out in litigation in the future. However, judging by the length of time it took the Supreme Court to hear and decide on the disparate impact theory itself, it could be some time.

Metropolitan Human Relations Commission

2015 Outreach

DATE	EVENT
JANUARY	
January 14, 2015	Fair Housing training at the YWCA Shelter
January 17, 2015	Metro booth at the Youth Empowerment Seminar
January 19, 2015	Dr. Martin Luther King, Jr. breakfast and Metro booth at celebration
January 20, 2015	Metro process training at the Northeast Indiana Paralegal Association's luncheon
January 29, 2015	Metro booth at the Fort Wayne Housing Authorities' Education, Money, and Job Fair
January 31, 2015	Metro's mission presentation at It is Well With My Soul: White Like Me: Race, Racism, and Privilege in American Video-viewing and discussion
FEBRUARY	
February 17, 2015	Two sessions of Fort Wayne Housing Authority Participant /Resident Training
February 25, 2015	Fair Housing training at Upstar Alliance (Realtor's Association) for their Continuing Education classes
February 26, 2015	Fair Housing training session Fort Wayne Housing Authority's Ready to Rent
MARCH	
March 2015	Three sessions of anti-harassment training, ADAAA training, and Metro process training for managers and employees
March 20, 2015	Fair housing Upstar Alliance.(Realtor Association)
March 24, 2015	Fair Housing training at the Fort Wayne Housing Authority
March 30, 2015	Fair Housing training for Vincent House managers
APRIL	
April 2, 2015	Metro's Annual Fair Housing Event for the public
April 3, 2015	Metro's Annual Fair Housing Event for realtors, landlords, and others
April 7, 2015	Fair Housing training with Upstar Alliance (Realtors Association)
April 8, 2015	Fair housing training with the Apartment Association in Waterloo
April 14, 2015	Fair housing training at the Apartment Association's Breakfast Connection
April 21, 2015	Metro process and mission training at IPFW
April 24, 2015	Fair housing training with Upstar Alliance (Realtors Association)
April 29, 2015	Fair Housing training at annual meeting of the Apartment Association
MAY	
May 9, 2015	Metro booth at disAbility Expo
May 14, 2015	Fair Housing training at Upstar Alliance (Realtors Association)
May 18, 2015	Metro process/diversity training at Indiana Tech
May 18, 2015	Anti-harassment and fair housing training per settlement agreement
May 28, 2015	Fair Housing at Upstar Alliance (Realtors Association)

JUNE	
June 5, 2015	Metro process/mission training at the League for the Blind
June 10, 2015	Fair Housing at Upstar Alliance (Realtors Association)
June 11, 2015	Fair Housing training at the Fort Wayne Housing Authority. (2 Sessions)
June 11, 2015	Fair Housing at Upstar Alliance (Realtors Association)
June 18, 2015	Metro booth at the Fort Wayne Housing Authority's Father's Day event
June 20, 2015	Metro booth at Faith Lutheran Life Church family day
June 24, 2015	Fair Housing at Upstar Alliance (Realtors Association)
June 30, 2015	Two sessions of diversity and anti-harassment training for employees at the Boys and Girls Club
JULY	
July 15, 2015	Fair Housing training per management company request
AUGUST	
SEPTEMBER	
September, 2015	Eight sessions of Metro, harassment, and disability training given to groups of employees per settlement agreement
September, 2015	Four sessions of diversity training conducted per request
September 2, 2015	Fair housing training for class at Ivy Tech
OCTOBER	
October 15, 2015	Metro and mediation training at Indiana Tech for Conflicts Resolutions class
October 15, 2015	Metro and Fair Housing training for the Crime Victims Care staff
October 21, 2015	Fair Housing training per settlement agreement
NOVEMBER	
November 3, 4, and 5, 2015	Three sessions of training for management employees concerning sexual orientation, gender identity, and transgender discrimination issues per settlement agreement
November 17, 2015	Fair housing training per settlement agreement
November 18, 2015	Diversity training at Vincent Village per request
November 19, 2015	Fair Housing training per settlement agreement
DECMEBER	
December 9, 2015	Fair Housing at Upstar Alliance (Realtors Association)
December 17, 2015	Fair Housing training at Fort Wayne Housing Authority



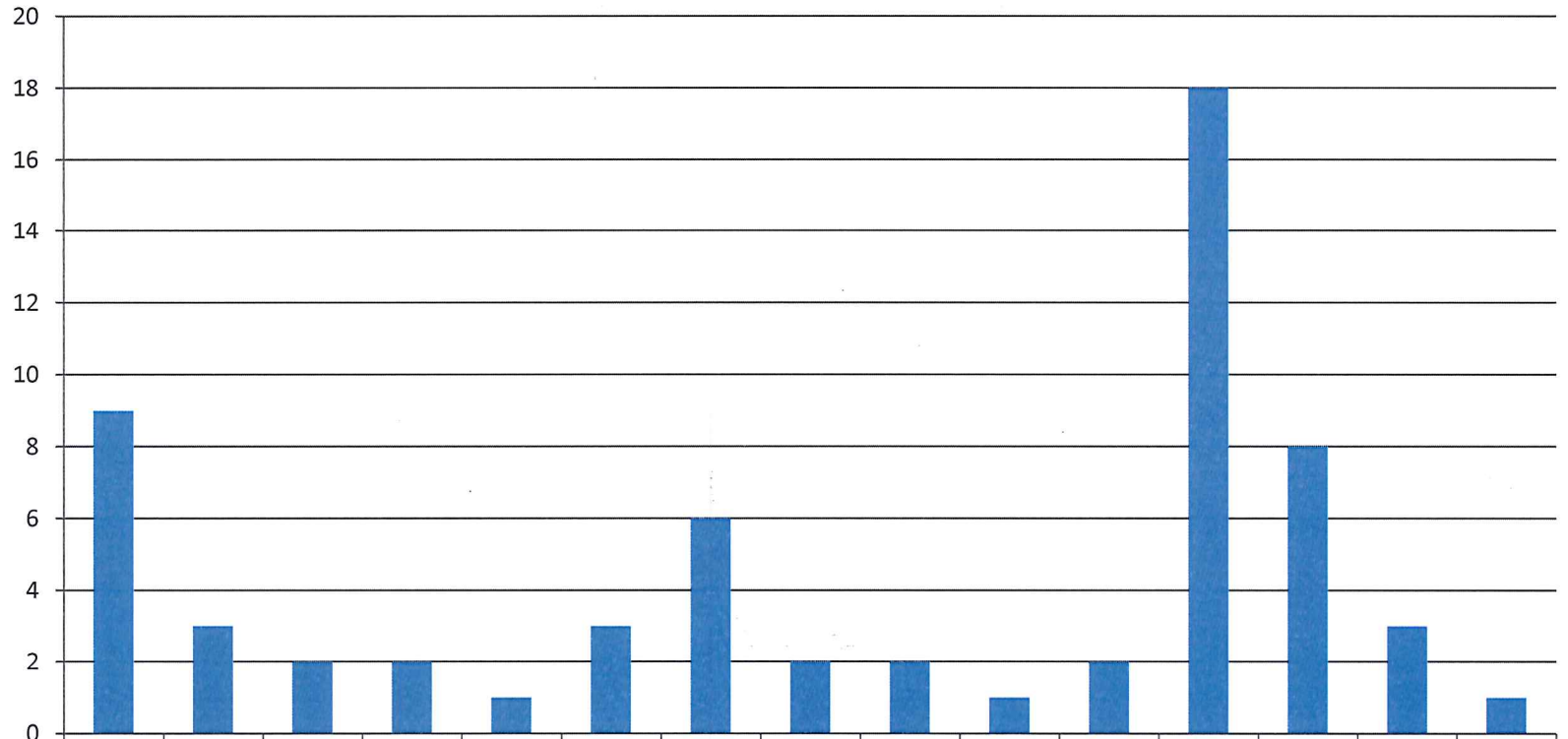
	Race (Black)	Race	Natl. Origin	Race & Gender	Race & Retal	Natl Origon & Retal	Gender -F	Gender -M	Gender (Preg)	Religio n	Other combo s	Retal.	Dis.	Age	Age Plus	3 or more basis	Sex Orient-ation
EEOC	40	3	6	7	19	1	3	2	2	1	21	1	25	16	14	24	2
Dual	61	8	13	14	13	2	9	4	6	1	21	24	16			10	4
Ordinance	27		2	1	4		1		3	1			4				1

EEOC (Employment cases Federal jurisdiction only)

Dual (Employment cases with Federal and local jurisdiction)

Ordinance (Employment cases, public accommodation, and education cases under local ordinance only)

Housing Cases Filed by Basis



	Race - ONLY	Race + Disability	Race + Familial Status	Race + Retaliation	Race + Sexual Harassment	National Origin - ONLY	Sex - ONLY	Sex + Dis.	Sex + Retal.	Sex + Familial Status	Sexual Harass. + Retal.	Dis. - ONLY	Familial Status - ONLY	Retal. - ONLY	Religion
Dual w/HUD	9	3	2	2	1	3	6	2	2	1	2	18	8	3	1

** Statistics provided by Lead Investigator Shannon Norris

WORKSHARING AGREEMENT CONTRACT NUMBERS

Employment

Metro has a contract with the United States Equal Employment Opportunity Commission ("EEOC") to enforce certain federal employment civil rights statutes on behalf of the federal government. The Contract has two major performance requirements: 1) Intake of cases that fall outside of Metro's jurisdiction (territorial jurisdiction, timeliness jurisdiction, and statutory jurisdiction); and 2) Case Closures (cases that implicate Title VII and Title VII related statutes).

EMPLOYMENT INTAKES: 437

EEOC Only (Outside Jurisdiction)		**Dual Filed** (Local and Federal)		**City Ordinance Only**	
Race (Black)	40	Race (Black)	61	Race (Black)	27
Race (Other)	3	Race (Other)	8	Race (Other)	0
National Origin	6	National Origin	13	National Origin	2
Race + Gender	7	Race + Gender	14	Race + Gender	1
Race + Retal	19	Race + Retal	13	Race + Retal	4
Natl Orig + Retal	1	Natl Orig + Retal	2	Natl Orig + Retal	0
Gender (Female)	3	Gender (Female)	9	Gender (Female)	1
Gender (Male)	2	Gender (Male)	4	Gender (Male)	0
Gender (Preg)	2	Gender (Preg)	6	Gender (Preg)	3
Religion	1	Religion	1	Religion	1
Other Combos	21	Other Combos	21	Other Combos	0
Retaliation	1	Retaliation	24	Retaliation	0
Disability	25	Disability	16	Disability	4
Age	16	Age	0	Age	0
Age + Other	14	Age + Other	0	Age + Other	0
Other Combos	24	Other Combos	10	Other Combos	0
Sex Orientation	2	Sex Orientation	4	Sex Orientation	1

SUMMARY	
Total Number of cases closed:	321
No Probable Cause:	185
Withdrawals:	5
Administrative Closures:	62
Education Cases:	6
Public Accommodation:	24
Employment: (Local ordinance only)	3
Total Settlements:	$258,616.94

**Numbers provided by Lead Investigator Delinda Wyatt

Housing

Metro has a cooperative agreement with the United States Department of Housing and Urban Development ("HUD") to enforce the federal fair housing act on behalf of the federal government. One of the criteria for this Agreement is that the City of Fort Wayne's fair housing laws be substantially equivalent to the federal fair housing laws.

HOUSING INTAKES: 63

Dual Filed (Local and Federal)	
Race ONLY	9
Race + Disability	3
Race + Familial Status	2
Race + Retaliation	2
Race + Sexual Harassment	1
National Origin ONLY	3
Sex ONLY	6
Sex + Disability	2
Sex + Retaliation	2
Sex + Familial Status	1
Sexual Harassment + Retaliation	2
Disability ONLY	18
Familial Status ONLY	8
Retaliation ONLY	3
Religion	1

SUMMARY	
Total Number of cases closed:	72
No Probable Cause:	44
Probable Cause	7
Administrative Closures:	4
Metro Only (closed):	0
Total Settlements	17

**Numbers provided by Lead Investigator Shannon Norris

Budget

As part of the cooperative agreement between HUD, EEOC and the City of Fort Wayne, Metro operates by utilizing funding from all three sources. Below is a breakdown on the budgets utilized for the 2015 calendar year.

City: $703,942.00
EEOC: $186,409.00
HUD: $133,944.00