

HRTO dismisses student's discrimination application – parents failed to cooperate in accommodation process

Date : May 8, 2017

The Human Rights Tribunal of Ontario recently considered whether the Conseil des écoles publiques de l'Est de l'Ontario ("School Board") accommodated the applicant's alleged disability by offering home instruction. In *Y.B. v. Conseil des écoles publiques de l'Est de l'Ontario* (May, 2017), the Tribunal dismissed the Application on the basis that the Applicant's parents made no attempt to cooperate in the accommodation process or work with the School Board to find an appropriate solution for their child. Emond Harnden's Paul Marshall and Sophie Gagnier successfully represented the School Board before the Tribunal.

At the relevant time, the Applicant, Y.B., was attending high school. At the end of December 2013, he was suspended from his school for a period of three days. Classes were to resume after the holiday break. However, the Applicant did not return to school after the break. Later in January 2014, the Applicant's parents contacted the Superintendent of the School Board advising that their child was sick and needed to see a doctor. A few hours later, the Superintendent replied to the Applicant's parents offering the option of home instruction. While the parents did not respond to the offer of home instruction until the very end of the Applicant's certified medical absence, the Superintendent nevertheless raised this accommodation from the outset. The Applicant argued that his parents made multiple requests for home instruction that were ignored. The Tribunal found that the evidence did not support the Applicant's claims.

The Tribunal found that the Applicant's conduct or that of his parents was not consistent with their obligation to participate in good faith in the accommodation process. The parents made no attempt to cooperate in the process or work with the School Board to find an appropriate solution for the Applicant. This behaviour on the part of the Applicant's parents fell far short of the collaborative process required by the individual requesting the accommodation. Without a response from the Applicant's parents, the School Board could not know whether to proceed with the home instruction option, or reasonably infer that this was the appropriate way of accommodating the Applicant's disability-related needs. The Applicant argued that home instruction must be provided even in the absence of a request from the parents and that it is the School Board's obligation to provide whatever accommodation is needed by the student. The Applicant submitted that his parents should not even have had to ask for this accommodation. The Tribunal held that this expectation was inconsistent with the principles set out by the Supreme Court of Canada decision in *Central Okanagan School District No. 23 v. Renaud* (1992), and with the idea that accommodation is necessarily a multi-party process.

In concluding that the School Board met its duty to accommodate the Applicant's disability under the Ontario *Human Rights Code*, the Tribunal held that parents or legal guardians are not excused

from their responsibilities to the accommodation process when they act on behalf of their child. The parents were responsible for the Applicant, and had a role to play in the accommodation process. Their refusal to respond to the School Board's communications did not allow the school to determine whether home instruction was the appropriate accommodation in the circumstances. It was due to their failure to cooperate that the School Board was unable to explore and deliver an appropriate accommodation.

For further information please contact [Paul Marshall](#) at 613-940-2754 or [Sophie Gagnier](#) at 613-940-2756.