



Education Law eBulletin

A newsletter for educators

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Human Rights Tribunal of Ontario Rules on Service Dog Request

The HRTO recently provided some much needed clarity with respect to a school board's obligation to permit service dogs in schools in Ontario. In *J.F. v. Waterloo Catholic District School Board* 2017 HRTO 1121, the school board's decision to deny a grade three student's application to have a certified service dog accompany him to class resulted in a claim of discrimination based on the student's disability. The application claimed that the service dog was to assist with the student's Autism Spectrum Disorder by calming and decreasing the student's anxiety while at school.

The decision is important for three reasons.

First, the HRTO confirmed that the general public does not have access to schools and therefore, the obligation relating to service animals under the *Accessibility for Ontarians with Disabilities Act 2005* does not apply. In other words, unlike malls and restaurants, schools are not obligated to ensure that a student is permitted to enter a school with their service dog.

Second, the HRTO found that the applicant failed to establish a *prima facie* case of discrimination as he was not adversely impacted by the school board's decision to deny the service dog. The applicant's medical evidence lacked an important component; none of the professionals supporting the use of the service dog had observed the applicant's behaviours while at school. Meanwhile, the school board's evidence was that the applicant was doing well academically and was socializing with his peers. The Tribunal accepted that the school board was accommodating the applicant at school with other supports and strategies to assist with his disability-related needs and the applicant was accessing educational services in a meaningful way.

Third, the decision confirms that a school board has the right to undertake its own process to determine whether a service animal is a necessary accommodation for a student in order to access a meaningful education. The Tribunal was satisfied with the school board's process of assessing the student by observing him while in the classroom and determining his needs from an education context. It was also important that the school board was timely in all of the steps taken in response to the service dog application and in addition, that there were prompt and continuous communications between the school administration and the student's parents.

As the popularity of the use of service animals grows, school boards will undoubtedly be faced with an increased number of requests to have service animals accompany students at school. School administrators should navigate

each request on a case-by-case basis and work together with parents to determine the best accommodation for each student in the circumstances.

What is the Appropriate Age for a Child to Ride Public Transit Solo?

A B.C. parent of five sparked the classic debate last week on parenting and the appropriate age to permit children to travel on public transit while unsupervised. The divorced father took the time and patience to teach his four eldest children, aged 7-11, to ride the public transit to and from school, a process that took two years. The commute takes the children approximately 45 minutes to get to their school. The controversy started when a complaint was received by the Ministry of Children and Family Development and the father was subsequently warned by the Ministry that none of his children can be left unsupervised if they are under the age of 10. Many media outlets across the country reported on the story and parents responded with differing opinions on parenting and the ability of parents to make decisions that they believe are in their children's best interests.

What is not clear from the story is whether the complaint came from the children's school or from their mother, who shares custody of the children. Many parents voiced their concerns online that the government has no place to impose such restrictions on a parent, especially in B.C. where there is no legislated minimum age when a child can be left unsupervised. The Ministry released a statement that each case is specific and they assess the child's risk before there is any intervention.

In Ontario, the *Child and Family Services Act, 1990* states that no one in charge of a child under the age of 16 "shall leave the child without making provision for his or her supervision and care that is reasonable in the circumstances."¹ Many parents in Ontario shared concerns online of their own children using public transit by themselves. It certainly may be reasonable for a child aged 15 or younger to use public transit unsupervised depending on the circumstances. For example, the Toronto District School Board provides bussing for students in accordance with its policy but only until Grade 5. Public transit tickets are available through the TDSB for students in Grade 6 onward.

In the meantime, the father of five launched a GoFundMe campaign to raise funds to legally challenge the Ministry's order, which has already well surpassed its financial goal.

Shibley Righton LLP partner **Sheila M. MacKinnon** and associate **Jessica Koper** will be speaking at the upcoming 12th Annual Advanced Issues in Special Education Law program hosted by Osgoode Professional Development in Toronto, Ontario, on October 16, 2017.

We welcome your comments and questions. Send them, and any updated contact information, to jessica.koper@shibleyrighton.com. If you wish to unsubscribe to this eBulletin, please send a blank e-mail to christen.broadbent@shibleyrighton.com

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¹ Subsection 79(3) *Child and Family Services Act*, R.S.O. 1990, c. C. 11