

Tribunal Rules That Requests for Guide Dog in Classroom Must Be Assessed Based on Each Student's Educational Needs

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On August 30, 2017, the Human Rights Tribunal for Ontario (“HRTTO”) released its decision in *J.F. v Waterloo Catholic District School Board*, 2017 HRTTO 1121. The HRTTO held that the respondent Waterloo Catholic District School Board (the “Board”) did not adversely impact the applicant’s meaningful access to education by denying a request that his guide dog be permitted to accompany him in class. In making this decision, the HRTTO affirmed that disability-related accommodations, such as the use of guide dogs, must be determined based on the particular needs of each student.

Background

The human rights complaint was filed by C.F., on behalf of his son, J.F., an elementary school student diagnosed with Autism Spectrum Disorder (“ASD”). In an effort to control J.F.’s emotional outbursts and tendency to bolt from their home, his parents applied and were accepted into the Autism Assistance Guide Dog Program. During the 2014/2015 school year, C.F. made a request to the principal and special education teacher at J.F.’s school that the guide dog be permitted to accompany him in class.

After reviewing the Board’s policies, the principal informed C.F. that his son would likely not qualify to have the guide dog attend his classes. Some months later, C.F. followed-up on his request with a formal letter to the superintendent of special education. The superintendent arranged for a case conference between J.F.’s parents and those working with J.F. at the school.

The meeting demonstrated that there was a disconnect between J.F.’s behaviour at home and what he was exhibiting in the classroom. The Board’s focus was on J.F.’s classroom behaviour and assessing whether the guide dog’s presence at school was necessary for him to access the curriculum. As part of its investigation, the Board arranged for a behavioural team to perform an independent assessment of J.F. in the classroom environment.

In a meeting on March 10, 2016, the Board informed J.F.’s parents that they could not identify any need for the guide dog in the classroom. Both the staff working with J.F. at

school and the independent behavioural assessment team observed that “the applicant was experiencing academic success and socializing well”. The Board stated that they would continue to provide the supports currently in place to address J.F.’s social skills but the guide dog would not be accommodated.

J.F. and his parents filed an application with the HRTO alleging discrimination on the basis of disability and failure to provide reasonable accommodation.

The HRTO’s Decision

The HRTO referred to the Supreme Court of Canada’s decision in *Moore v British Columbia (Education)*, 2012 SCC 61, which confirmed that to demonstrate prima facie discrimination in the delivery of educational services, the applicant must show:

1. he has a characteristic protected from discrimination;
2. he has experienced an adverse impact with respect to the decisions or actions of the respondent in the delivery of education services; and
3. the protected characteristic was a factor in the adverse impact.

The decision turned on whether the applicant’s meaningful access to education was adversely impacted when the Board refused to grant his accommodation request.

The HRTO dismissed the applicant’s allegation that the Board failed to meet its procedural duty to accommodate. The Board took timely and thorough action to investigate J.F.’s needs and behaviours in the classroom. The multiple meetings with J.F.’s parents and the behavioural team’s independent assessment were necessary and important steps taken by the Board in fulfilling its procedural duty.

The HRTO also found that the Board had fulfilled its substantive duty to accommodate. The HRTO based this decision on the evidence specific to J.F.’s educational needs in the classroom. While the HRTO accepted evidence presented by the applicant’s witnesses that the guide dog has had a positive impact on J.F.’s behaviours, the Board’s evidence was preferred because their witnesses’ conclusions were based on actual observations of J.F. in the classroom. The Board’s evidence demonstrated that J.F. was performing well academically. The “bolting” behaviours identified by his parents were not exhibited at school and J.F.’s safety was not a concern. Further, the Board’s witnesses consistently identified that J.F. was challenged by oral and written comprehension and expression, for which the guide dog would not provide assistance.

The HRTO emphasized the reasonableness of the Board’s findings by quoting the mandate and purpose of public education as defined in Ontario’s Education Act, as follows:

the evidence demonstrates that the supports and strategies that the respondent has provided to accommodate his disability related needs are providing him “the opportunity to realize [his] potential and develop into [a] highly skilled, knowledgeable, caring citizen who contribute[s] to [his] society, a defined purpose of Ontario’s Education Act.”

In conclusion, the HRTO decided that the Board’s refusal to accommodate J.F.’s request that his guide dog accompany him in class did not adversely impact his meaningful access to education.

Comment

This decision affirms the principle that school boards must make reasonable efforts to ensure that all students have meaningful access to educational services. This case serves as an example of circumstances where a school board used timely and thorough investigative measures to assess whether a student required a particular **accommodation to realize his educational potential. The HRTO confirms that these decisions should be made on an individual case-by-case basis, grounded in evidence specific to the disability-related needs of each student.**

By

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