

EQUITY AND INCLUSIVE EDUCATION: THE LEGAL PERSPECTIVE

Ontario Education Services Corporation

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This Session

- ◆ Formation of Our Young People – Sister Joan Cronin
- ◆ Legal Perspective – Eric Roher
- ◆ Case Studies
- ◆ Issues that have arisen since the legislation was enacted
- ◆ Action Items by Areas of Focus

Statement from the Assembly of Catholic Bishops of Ontario – January 14, 2011

- ◆ Every individual, young or old, is to be treated with reverence.
- ◆ Bullying is wrong under any circumstances.
- ◆ All schools should provide a safe and welcoming environment for each student.

- ◆ The debate surrounding Gay/Straight Alliances in Catholic high schools is being complicated by the fact that people are not distinguishing between and objective and strategy.
- ◆ Our objective is that each student be treated with dignity, for each is a child of God.

“We seek to achieve the goal of a safe and loving environment for all students in a way that is in harmony with our faith.”

Thomas Collins

Archbishop of Toronto

Legal Perspective

- ◆ Our school system gives pre-eminence to the tenets of the Catholic faith, consistent with the protections afforded in the:
 - Ontario *Human Rights Code* (S. 19);
 - *Constitution Act, 1982* (s. 93); and
 - *Canadian Charter of Rights and Freedom* (s. 29).

Catholic School Boards

- ◆ All people are created equal, in the image of God, each with inimitable characteristics deserving of dignity (Genesis: 1:27).
- ◆ The Board recognizes the many customs, traditions and beliefs that make up the Catholic community.

Religious Accommodation Guidelines

- ◆ School board policies on religious accommodation must be in accordance with the Ontario *Human Rights Code*.
- ◆ Must include a religious accommodation guideline which prohibits discrimination on the grounds of creed and imposes a duty to accommodate.
- ◆ Must take steps to provide religious accommodation to students and staff.

Human Rights Code

Section 1 – Services:

“Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.”

Creed

- ◆ One of the prohibited grounds of discrimination under the Code.
- ◆ Interpreted by the OHRC to mean “religious creed” or “religion”.
- ◆ It is a professed system of faith, including both beliefs and observances or worship that is sincerely held.

Incite Hatred or Violence

- ◆ Creed does not include secular, moral or ethical beliefs or political convictions.
- ◆ The policy does not extend to religions that incite hatred or violence against others or violate criminal law.

Duty to Accommodate

- ◆ Legal obligation that school boards, employers, unions and service providers have under the Code to take measures to enable people to benefit and take part in provisions equally.
- ◆ To participate equally and perform to the best of their ability in the workplace or education setting.

Duty to Accommodate

- ◆ May modify a rule or make an exception to all or part of it for the person requesting accommodation.
- ◆ Must be provided to the point of undue hardship.

Areas of Accommodation

1. School opening and closing exercises;
2. Absence for Religious Holy Days;
3. Prayer;
4. Dietary requirements;
5. Fasting;
6. Religions dress;
7. Modesty requirements in physical education;
and
8. Participation in daily activities and curriculum.

Case Studies

1. How should the school administrator proceed?
2. What options are available to accommodate the student's request?
3. What is the obligation of the school?
4. What is the responsibility of the student and his/her family?

Undue Hardship

- ◆ In determining whether there is undue hardship, section 24(2) of the Code provides that reference should be made to:
 - the cost of accommodation;
 - outside sources of funding, if any; and
 - health and safety requirements.
- ◆ It will be based on objective evidence.

Undue Hardship

- ◆ A determination that an accommodation will create undue hardship carries with it possible significant liability to the Board.
- ◆ It should be made with the approval of the appropriate supervisory officer, or where appropriate, the Board of Trustees.

Undue Hardship Determination

- ◆ Where a determination is made that an accommodation would create an “undue hardship”, the person requesting the accommodation will be given:
 - written notice;
 - the reasons for the decision; and
 - the objective evidence relied upon.
- ◆ The accommodation seeker will be informed of his or her recourse under the Board’s Equity and Inclusive Education Policy.

Next Best Accommodation

- ◆ When a determination has been made that an accommodation would cause undue hardship, the Board will seek to implement the next best accommodation.
- ◆ Or, the Board will consider phasing in the requested accommodation.

Implementing Accommodation in a Catholic School Board

- ◆ Board staff, students and parents should be aware of their rights and responsibilities in Catholic school boards.
- ◆ Accommodation will be provided in accordance with the principles of dignity, individualization and inclusion.
- ◆ The Board will work co-operatively, and in a spirit of respect, with all partners in the accommodation process.

Accommodation Based on Request

- ◆ The Board will take all reasonable steps to provide accommodation to individual members of a religious group to facilitate their religious beliefs and practices.
- ◆ All accommodation requests will be taken seriously.
- ◆ No person will be penalized for making an accommodation request.

Decision to Accommodate

- ◆ The Board will base its decision to accommodate:
 - by applying the Code's criteria of undue hardship; and
 - the Board's ability to fulfil its duties under Board policies and the *Education Act*.

Role of the Board and its Staff

- ◆ To ensure respect for the diverse religious beliefs and practices of students and their families and other staff.
- ◆ Administrators should not be placed in a situation of monitoring a child's compliance with a religious obligation and enforcing such practices, such as wearing a head covering.

Religious Accommodation – Staff

- ◆ The person requesting accommodation should advise the administration at the beginning of the school year, to the extent possible.
- ◆ Absence of employees due to religious observances should be granted or determined by the Guideline and collective agreement.

Religious Accommodation - Students

- ◆ Students must present verbal or written notice from their parents specifying their accommodation needs relating to religious observances, including holy days on which they will be absent from school.
- ◆ This notice should be made in advance to ensure that scheduling of tests, assignments or exams takes religious observances into consideration.

Student Handbooks

- ◆ Student handbooks and parent newsletters should include information about the procedure to follow to request an accommodation for religious observances.
- ◆ Such procedures should be easy for staff, students and parents to understand.

Unresolved Requests

- ◆ Despite the Board's commitment, an individual may feel that discrimination based on religion has occurred.
- ◆ The Board will take reasonable and timely steps to address the unresolved issues raised by the affected person.
- ◆ This could include a dispute resolution mechanism.

Dispute Resolution Mechanism could include:

- ◆ Introduction of supervisory officer;
- ◆ Consultation with religious leader;
- ◆ Involvement of school resource person, i.e. social worker, psychologist, child and youth worker; or
- ◆ Outside facilitator.

Open Discussion with Student and Family

1. Communicate early in the process.
2. Document the attempts at accommodation.
3. Practice the 3v's: ventilate, validate and verify.
4. Ask the student and family for possible solutions to the accommodation request.

Open Discussion with Student and Family

5. Separate the people from the problem.
6. Focus on interests, not positions.
7. Review options for mutual gain.
8. For consultation or further clarification, the administrators should contact the Board's Equity Officer.

Unresolved Requests

Students

- ◆ Where a student maintains that his or her rights under the Board's religious accommodation policy have been compromised, then the matter will be referred to the appropriate Superintendent of Education.

Unresolved Requests (continued)

Employees

- ◆ Where, after an employee's consultation with the Superintendent of Education, unresolved issues remain, then the matter will be referred to the Superintendent of Human Resources.

Accommodation Applied to the Individual

- ◆ When an individual requests an accommodation related to the curriculum, the accommodation applies to the individual in question and not to the whole class.
- ◆ The Board recommends an informed, common-sense approach to questions of religion and curriculum.
- ◆ These questions should be resolved by open discussion between the teacher, the student and his/her family.

Limitations to Religious Accommodation

- ◆ The Board supports freedom of religion and the right to his/her religious beliefs.
- ◆ Freedom of religion is not absolute and religious accommodation is carried out in the larger context of the Catholic educational system and denominational rights.

Accommodating an Individual's Right to Freedom of Religion

- ◆ The Board will seek to accommodate an individual's right to freedom of religion in a manner that not only respects the individual's beliefs but the principles of the Catholic Church.

Action Items by Area of Focus

1. Board policies, programs, guidelines

2010 – 2011

- School Board will implement equity and inclusive education policies.
- Embedded equity principles in board and school improvement plans.

2011 – 2012

- Implement positive employment practices that support equitable hiring, mentoring, retention, promotion and success in planning.

Policy Review

- ◆ All the board's policies, guidelines, programs and practices should reflect diverse viewpoints of the broader community.
- ◆ Students should see themselves represented in the:
 - curriculum
 - programs
 - culture
 - teaching
 - administrative and
 - support staff of the school.

Effective Board Practices

- ◆ Boards should make every effort to identify and remove discriminatory biases and systemic barriers.
- ◆ For example, school board may undertake employment system reviews.
- ◆ May broaden recruitment pools.
- ◆ Board and school staff should reflect the diversity within the community.

2. Shared and Committed Leadership

2011 – 2012

- ◆ Provide opportunities for students, administrators, teachers, support staff and trustees to participate in equity and inclusive education training.
- ◆ Collaborative leadership supports the active engagement of:
 - students;
 - parents;
 - unions;
 - service organizations; and
 - community partners.

3. School-Community Relationships

2009 – 2010

- ◆ Boards will review existing community partnerships to support the principles of equity and inclusive education.
- ◆ Schools will implement strategies to ensure community partnerships reflect the broader community.
- ◆ Schools will work towards representation of diverse groups on school committees.

4. Inclusive Curriculum and Assessment Practices

2010 – 2011

- ◆ Board's will support the school's review of classroom strategies that promote school-wide equity and inclusive policies and practices.
- ◆ Schools will review classroom strategies and revise them to ensure they reflect equity and inclusive education policy.

Effective School Practice

- ◆ Students should see themselves reflected in the curriculum;
- ◆ School practices may include providing information about women's contribution to science and technology;
- ◆ About Black inventors;
- ◆ About Aboriginal beliefs and practices;
- ◆ About different customs and traditions taking into account the backgrounds of students.



5. Religious Accommodation

2009 – 2010

- ◆ Boards will have religious accommodation guidelines in place and communicate these guidelines to the school community.

Effective School Practice

- ◆ Granting a leave for a staff member for a religious observance (i.e. Diwali, Eid, Yom Kippur).
- ◆ Modifying a student's responsibilities in an examination schedule or on a field trip.
- ◆ Permitting religious attire, such as a turban, a hijab or a ceremonial kirpan.
- ◆ Finding a quiet place in the library to accommodate a student's requirement for daily prayer.

6. School Climate and the Prevention of Discrimination and Harassment

2009 – 2010

- ◆ Boards will implement strategies to identify and remove discriminatory barriers that limit engagement by students, parents and the community.
- ◆ Put in place procedures to enable students and staff to report incidents of discrimination and harassment safely.

Effective School Practice

- ◆ Regular monitoring of school climate can identify inappropriate behaviours, issues or barriers that should be addressed.
- ◆ Board should incorporate questions on equity and inclusive education into its school climate surveys.
- ◆ School-led activities or clubs, such as Students Against Racism, promote and encourage healthy relationships.

7. Professional Learning

2010 – 2011

- ◆ Boards will support schools review of classroom strategies that promote equity and inclusive education policies.

2011 - 2012

- ◆ Boards will provide opportunities for students, administrators, teachers and support staff to participate in training and leadership initiatives.

Building Awareness

- ◆ The negative impact on student's lives of discriminatory behaviour and attitudes, including:
 - Racism
 - Islamphobia
 - Anti-Semitism
 - Homophobia
 - Gender-based violence
- ◆ Can help educational leaders, Trustees and staff change individual behaviour.
- ◆ Draw upon expertise within your organization, other boards, community agencies and groups.

8. Accountability and Transparency

2010 – 2011

- ◆ Schools will develop school improvement plans that are aligned to Ontario's equity and inclusive education strategy.

2011 - 2012

- ◆ Boards will establish processes to monitor progress and assess the effectiveness of the policies, programs and procedures.
- ◆ Schools will establish self-assessment processes to determine the effectiveness of their policies.

Monitoring Progress

- ◆ Schools could use a School Effectiveness Survey to monitor progress.
- ◆ Schools could collect “before and after” data.
- ◆ An improved student achievement, reduced rates of absenteeism and increased student participation in the school.

Conclusion

- ◆ Today's global, knowledge-based economy makes the work of our schools critical in our student's success.
- ◆ Education directly influences a student's life changes and life outcomes.
- ◆ Our schools are shaping global citizens who celebrate diversity, tolerance and acceptance.

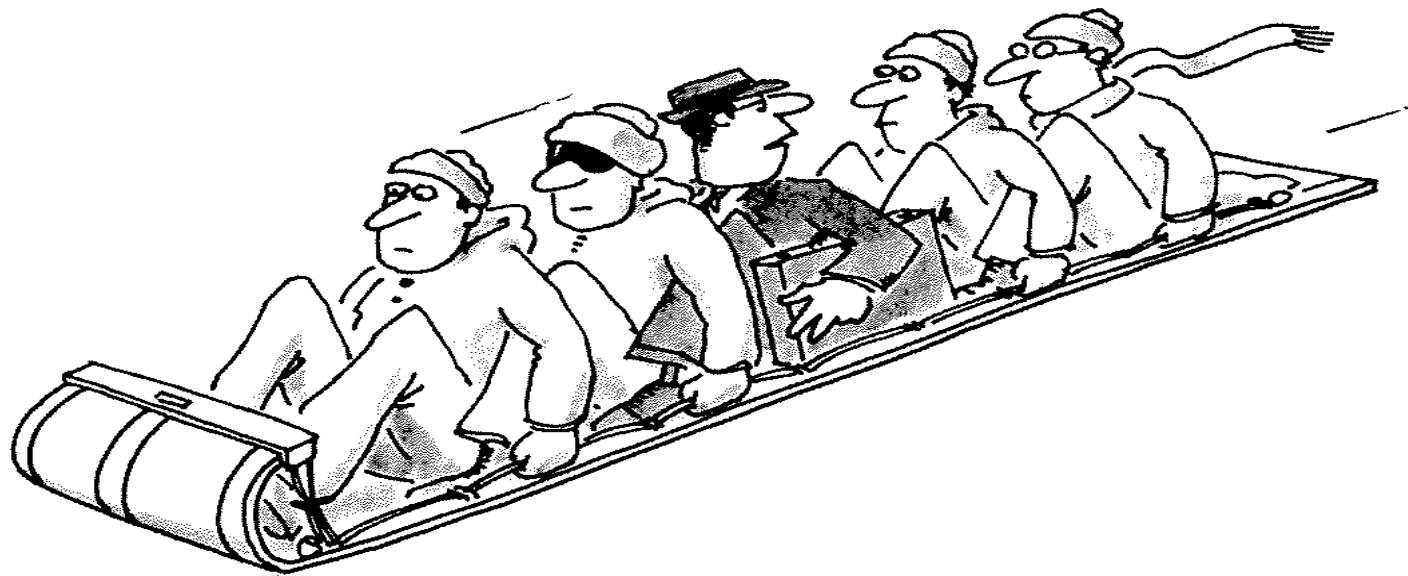
UNESCO - 2008

“Inclusive education is central to the achievement of high-quality education for all learners and the development of more inclusive societies.”

Inclusive Education: The way of the future

“I touch the future, I teach.”

Christa McAuliffe



**“Look, I’m not saying it’s going to be today.
But someday - someday - you guys will be
happy that you’ve taken along a lawyer.”**

THANK YOU!

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