School Board Update

School Bus Transportation Policy Deemed Discriminatory

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A recent decision of the Human Rights Tribunal of Ontario ("HRTO") has added to the fast growing group of "family status" discrimination cases. *J.O. v. London District Catholic School Board* highlights that there are many different ways a school board may be vulnerable to claims of family status discrimination. In this *FTR Now* we review this case and discuss its implications for school boards.

THE DECISION

J.O., at the relevant time, was a Grade 6 student. His parents were divorced and had a shared custody arrangement. In May 2007, the custody arrangement changed such that J.O. and his siblings would live with each parent on alternating weeks.

The London District Catholic School Board ("School Board"), whose bus transportation services are provided by a transportation consortium, Southwestern Ontario Student Transportation Services ("STS"), denied a request by J.O.'s mother to allow him to take a different bus route on alternating weeks. The denial was based on STS's "primary address policy" which required a student to designate a primary address from which he would be picked up and dropped off every day.

J.O., through his mother, applied to the HRTO, claiming that the School Board and STS were discriminating against him on the basis of family status. The HRTO found that the "primary address policy" discriminated against J.O. as it required him to locate a second mode of transportation in order to reach his home every other week. This burden was not faced by children whose parents did not have shared custody arrangements.

The HRTO further found that the School Board and STS failed to accommodate J.O. to the point of undue hardship. The HRTO noted that the Respondents failed to review the request of J.O.'s mother for potential accommodation, and simply relied on the "primary address policy" in rejecting the request. It also disagreed with the Respondents' arguments that the accommodation requested by J.O. would lead to a heavy administrative burden and/or safety concerns.

The Respondents were ordered to amend the policies governing bus transportation to directly address the accommodation of individuals subject to custody arrangements that conflict with the "primary address policy."

IMPLICATIONS FOR SCHOOL BOARDS

This decision will have implications for other school boards with primary address policies and could also have implications for the manner in which school boards provide education and services to students who are subject to shared custody arrangements.

If you have any questions regarding this case, or the duty of school boards to accommodate in general, please contact your regular Hicks Morley lawyer.

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