



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

S.D.

Applicant

-and-

District School Board of Niagara

Respondent

AND BETWEEN:

E.H.

Applicant

-and-

District School Board of Niagara

Respondent

AND BETWEEN:

Y. H. as represented by their Litigation Guardian S.D.

Applicant

-and-

District School Board of Niagara

Respondent

DECISION

Adjudicator: Romona Gananathan
Date: October 16, 2024
File Number: 2018-33873-I; 2019-36253-I; and 2022-50495-I
Citation: 2024 HRTO 1385
Indexed as: **S.D. v. District School Board of Niagara**

WRITTEN SUBMISSIONS

E. H., Y.H, and S.D., Applicants)
)
) Christine Johnson, Counsel

District School Board of Niagara,)
Respondent)
)
)

INTRODUCTION

[1] These three Applications allege discrimination with respect to services because of ancestry, ethnic origin, and creed, contrary to the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “*Code*”).

[2] The parties consented to mediation/adjudication under Rule 15A of the Tribunal’s Rules of Procedure. As a result of this process, the parties entered into Minutes of Settlement and submitted a Form 25 to this Tribunal, which included that the parties jointly request that the Tribunal issue a Consent Order under s. 45.9(2) of the *Code*.

CONSENT ORDER

ORDER

[3] Pursuant to s. 45.9(2) of the *Code* and on the joint request of the parties, the Tribunal makes the following final Order in these Applications:

WHEREAS E.H. and M.H. applied to be enrolled at Eden High School a public secondary school operated by the District School Board Of Niagara (“DSBN”);

AND WHEREAS E.H. and M.H. have filed applications with the Human Rights Tribunal of Ontario (“Tribunal”) alleging discrimination contrary to the *Human Rights Code* (“*Code*”) in “goods, services and facilities” for reasons based on ancestry, creed and ethnic origin, (HRTO File Nos. 2018-33873-I, 2018-34025-I);

AND WHEREAS Y.H. is presently enrolled at Eden High School and has filed an application with the Tribunal (HRTO File No. 2022-50495-I) alleging discrimination in “goods, services and facilities” for reasons based on creed, and reprisal or threat of reprisal, contrary to the *Code*;

AND WHEREAS S.D. is the parent and litigation guardian of E.H., M.H. and Y.H. and has also filed an application on her own behalf (HRTO File No. 2019-36253-I);

AND WHEREAS pursuant to an Interim Decision dated October 11, 2023 (*SD v District School Board of Niagara*, 2023 HRTO 1499 (CanLII)) (“Interim Decision”), the Tribunal dismissed the application filed by M.H. (HRTO File No. 2018-34025-I) in its entirety due to delay;

AND WHEREAS pursuant to the Interim Decision, the Tribunal struck the allegations prior to August 2015 (HRTO File Nos. 2018-33873-I, 2019-36253-I) due to delay. This decision allowed the two applications to proceed on the basis of five incidents of alleged discrimination that occurred from December 2016 to November 2017;

AND WHEREAS pursuant to the Interim Decision the Tribunal ruled that E.H. is no longer a minor and is presumed to have capacity to participate in the proceedings corresponding to the Applications;

AND WHEREAS pursuant to a Case Assessment Direction dated March 21, 2024, the Parties have consented, and the Tribunal has consolidated the three remaining Applications 2018-33873-I filed by E.H., 2019-36253-I filed by S.D., and 2022-50495-I filed by Y.H. (the “Applications”);

AND WHEREAS the Parties recognize that concerns were brought to the attention of the DSBN through the Applications regarding Eden High School’s perceived promotion of Christianity through Eden’s Spiritual Life Centre (“SLC”). In response, the Parties recognize that since the dates of the Applications, the DSBN has engaged in efforts to address the concerns largely reflected in the allegations contained in the Applications;

AND WHEREAS on May 30, 2024, the Eden Advisory Board (“EAB”) and the SLC, as license holders, entered a license agreement with the DSBN with regards to its program offerings at Eden High School;

AND WHEREAS it is recognized that Eden High School is not considered an alternate school or a systems school by virtue of affiliation with any religion or affiliation with the SLC;

AND WHEREAS the Parties, which includes the respondent (the DSBN), and the applicants (S.D., E.H., and S.D. as litigation guardian of Y.H.) (collectively, the “Parties”) attended mediation and adjudication on August 8, 2024 with respect to the filed HRTO Applications corresponding to HRTO File Nos. 2018-33873-I, 2019-36253-I, and 2022-50495;

AND WHEREAS the DSBN recognizes the obligations of service providers to provide services free from discrimination pursuant to the *Code*;

AND WHEREAS pursuant to those obligations, including as set out in Tribunal jurisprudence (*YY v Toronto District School Board*, 2021 HRTO 215 (CanLII) at para 45; *DB v Toronto District School Board*, 2021 HRTO 991 at para 203) which has expressly recognized that education service

providers in Ontario are expected to comply with the *Code*, the DSBN is compelled to enter into this agreement;

NOW THEREFORE as a result, the efforts (as outlined below) have been implemented by the DSBN to ensure respect and continued compliance with all *Code* obligations, including fostering diversity, equity and inclusion:

1) Logo and Slogan: The DSBN changed the Eden High School logo to no longer reflect an association with religion. The “E” in Eden had what appeared to be a cross– this was removed. Eden High School removed the old logo from the school building, changed the new logo on all new student uniforms ordered after June 30, 2021, acquired new athletic uniforms with the new logo, new logo’ed clothing for staff and the branding was updated throughout. The old slogan “The truth will set you free” has been discontinued and replaced by “Mind. Body. Spirit”. These changes do not prevent the use of items by students, that have been acquired or ordered before June 30, 2021.

2) Space: Where space in Eden High School is made available to any religious group for prayer or other student religious exercises, the DSBN will make available the same or comparable space (scaled by student participation rates) to other religious groups for student prayer or other student religious exercise, upon request.

3) Religious Signs: Religious signs, symbols or references have been removed from Eden High School (save and except as may be related to the delivery of Ontario Ministry of Education curriculum or as may be incorporated by students in their schoolwork in a manner consistent with their freedom of religion).

4) Changes to Eden School Council: Religious affiliation has been removed from the Eden High School Council and/or its Constitution.

5) Website: The Eden High School website has been revised to reflect neutrality and not focus on church congregations or emphasis on the SLC. The DSBN has discontinued the use of a separate tab on the Home Page of the Eden High School website to identify the SLC and has removed “What Makes Eden Unique” tabs. The SLC and any other religious groups conducting extra-curricular activities as a club for students is listed under the “Clubs” tab, described in a manner consistent with the description of other clubs. The Eden High School website (and the website of all DSBN schools) has included a “Days of Significance” tab to ensure inclusivity and to highlight diverse perspectives of its students.

6) Revisions to Eden School Map: The Eden High School map has been updated to remove the chapel.

7) SLC Participation: In addition, efforts have been made to differentiate SLC's activities from activities attributable to either Eden school or to the DSBN. This process was undertaken through direct communication and collaboration with the SLC, involving identifying the need for a clear delineation between the two entities, and outward changes to the perception of the parties' relationship. For example, the following actions have been completed:

(a) Limited Access to Eden School: The SLC's access to Eden High School has been limited, as their swipe card has been disabled, as of September 1, 2019. The SLC can only access the school during the school year during school hours unless they seek and receive a Community Use of School permit for any additional hours (following the same process afforded to all community use). The SLC has also been instructed not to be in the hallways during the instructional day, unless using facilities or if they require something from the office.

(b) Limited Interactions with Students: The SLC's participation in Eden High School's events has been reduced and their participation is only permitted similar to representatives of other extra-curricular clubs. For example, the SLC no longer participates in graduation ceremonies, or attends PD days. Participation in Eden High School's Open House and/or Registration is in the same manner as permitted to representatives of other extra-curricular clubs within the school. Eden High School has confirmed that as non-school staff, the SLC cannot meet with students during instructional time unless students have signed out of class and with parent/guardian permission. Further, school involvement beyond the extra-curricular club activities by the SLC requires compliance with the DSBN volunteer policy and procedure. As SLC retreats are not school activities and are held at periods in the year where school is in session, similar to all non-school activity absences, students will be marked absent from school in the normal course similar to any other non-school related activity absence.

(c) Changes to Communications: There is now a differentiation between Eden High School communications and communications from the SLC. School communications are sent by Eden High School staff to school families. The SLC is solely responsible for communication that they wish to have with their members. For example, Eden High School no longer sends communications authored by the SLC and the SLC no longer solicits membership through Eden High School communications. The SLC sends all communications directly to families through its own mailing list, which they solicit through their independent SLC website.

(d) Fundraising: The SLC receives no preferential treatment from the DSBN or Eden High School in comparison to any other student club or activity with regard to raising funds to support its activities. The SLC solicits fundraising directly from families that have provided their contact information directly to

the SLC and the SLC does not use Eden High School's mailing list or Eden High School communication vehicles for this purpose.

(e) Eden School Marketing: Eden High School does not hold or assist in the promotion of funding for the SLC (including the SLC banquet) or SLC retreats that they offer. Eden High School calendar removed references to the SLC retreats and banquets, and Eden High School schedule has removed references to the SLC chapel. The SLC is identified in open house videos with the same prominence as other clubs. As of June 21, 2019, the Eden High School deleted "and partnering with the EAB" from the chair of Eden School Council letter to school council parents.

(f) Role in Eden School Council: SLC staff are no longer members of the School Council, save and except where they are appointed by School Council as one of the Community Representatives contemplated under Regulation 612/00. Reports related to school extra-curricular clubs (which may include the SLC activities) at Eden School Council are given by student council along with news of other clubs. The SLC no longer provides a report at School Council meetings.

(g) Clarification Regarding Employee Status: Clarity has been assured in Eden High School's handbook as SLC employees are not identified as DSBN "employees" and the SLC has been instructed to not present in ways in which students or members of the public may interpret their actions as attributable to the DSBN and/or the Eden High School. SLC employees do not attend any staff meetings, and if the cafeteria space is used to host a staff meeting, the SLC are asked to leave the school early on those days.

(h) Role with Teams and Sports: The SLC are not present during PD Days, and SLC staff do not support other teams or clubs unless under the capacity as a "volunteer" as above-noted.

8) SLC Retreats: Any references to the independent SLC Retreats have been removed from the Eden High School Calendar, website or any other promotional material. Students are marked absent from school if they attend a SLC Retreat no different than any student who is absent from school to participate in a non-school activity. The DSBN and Eden High School will not promote nor assist in funding any retreats conducted by the SLC.

9) EAB: The DSBN and Eden High School have ceased the historical involvement of the Eden Advisory Board ("EAB") (or any other successor board or committee), in the administration or extracurricular activities of Eden High School, except as contemplated by and consistent with Reg. 612/00 of the *Education Act*. This prohibition includes the EAB receiving reports from the Principal or otherwise involving the Principal in its meetings (save and except meetings for purposes related to the license agreement), speeches on behalf of the EAB by the EAB Chair or other members at the

Open House, and the EAB liaising with and receiving the preferential support of the School Council as contemplated in “Supporting the Eden Advisory Board (EAB)”, etc. See <https://eden.dsbm.org/councils/school-council>.

10) Programming: The DSBM continues on its journey of ensuring feelings of inclusion for all DSBM students and continues to update its school programming for students and the school community, in accordance with the Ministry of Education Ontario curriculum and through the work of the DSBM Equity Team, DSBM Inclusion, Diversity, Equity Alliance of Students (IDEAS), and the DSBM Equity, Inclusion and Anti-Racism Community Advisory Committee and to ensure compliance with *Code* obligations (some examples of this work includes presentations to the Parent Involvement Committee (PIC) such as, “Disrupting Islamophobia: Building Inclusive Communities”, and development of Equity Resources on the DSBM website (<https://www.dsbm.org/equity>) etc.)

11) Other: The DSBM prohibits all proselytizing for any religion at Eden High School, or in any materials or activities associated with the school, including in its contacts with incoming students, at Open House or at other school-sponsored activities, including registration and graduation ceremonies. The DSBM has ceased providing any student information to the SLC, including names and contact information of students, and disseminating SLC information directly on behalf of SLC to students or to their families.

12) License Agreement: On May 30, 2024, the EAB and the SLC, as license holders, entered a license agreement with the DSBM with regards to its program offerings to Eden High School. The EAB and SLC, as license holders, are entities independent from the DSBM.

Dated at Toronto, this 16th day of October, 2024.



Romona Gananathan
Vice-chair