



## ACCOMMODATING RELIGIOUS AND CULTURAL DIVERSITY IN THE SCHOOL

### Determining Your Room for Manoeuvre Supplement to the Training Unit for School Principals Number 8.1 Intercultural Education

May 1997

Direction des services aux communautés culturelles

### TABLE OF CONTENTS

- [CAVEAT](#)
- [CASE 1](#)
- [CASE 2](#)
- [CASE 3](#)
- [CASE 4](#)
- [CASE 5](#)
- [CASE 6](#)
- [CASE 7](#)
- [CASE 8](#)

### CAVEAT

This document accompanies the training unit for principals prepared by the Direction des services aux communautés culturelles (DSCC) of the ministère de l'Éducation du Québec (MEQ) on accommodating religious and cultural differences in the school setting. It presents an interpretation of the room for manoeuvre available in the eight case studies presented in the unit in light of the various laws regulating education and the Québec *Charter of Human Rights and Freedoms*.

It is important to make clear that this document has been designed to be used in the training sessions on the very complex subject of dealing with cultural and religious differences in the school rather than as a collection of absolute principles. Thus the process proposed for determining your room for manoeuvre should provide some guidelines and raise points for discussion. We make no claim to possessing absolute truths or solving the various conflicts described once and for all, but we do want to offer school principals some examples of approaches that may help them in their decision making.

Furthermore, there are still gray areas in some of the case studies, where there is no jurisprudence. In addition, the legal room for manoeuvre only constitutes a general guideline within which school administrations will carry out conciliation and negotiation.

Finally, none of the cases described represents an official legal opinion of the ministère de l'Éducation. In cases of value conflicts, school principals should call on their legal services department to help them find equitable and appropriate solutions.

Marie-France Benes  
Director

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Design and development

**Marie McAndrew**

*Professor*

Department of Educational Studies and Administration

Faculty of Education

Université de Montréal

*Director*

Inter-University Research Centre on Immigration, Integration and Urban Dynamics

Project coordinator

**Marc-Yves Volcy**

*Consultant on Services to Cultural Communities*

DSCC

English Version

**Phyllis Aronoff**

*Translator*

Direction de la production en langue anglaise

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## CASE 1

### **Step 1: Legitimacy of the problem raised by the parents' attitude**

(The demand in this case is a "passive" one that appears in the form of resistance, as often occurs with parents belonging to disadvantaged minorities.)

#### **a) Is the school administration legally bound to find an accommodation?**

It is hard to argue that adverse effect discrimination is involved in this case. The view of school and learning held by the parents of Haitian origin (one that excludes the winter camp) does not belong to their religion, and therefore their right to practise their religion cannot be invoked (section 3 of the *Charter of Human Rights and Freedoms*); nor can their right as members of an ethnic minority to maintain and develop their own cultural interests (section 43). (In fact, a sizable minority of the parents of Haitian origin in the school hold the opposite opinion on this issue.) These parents certainly have the right to influence the school's educational project, but that right belongs to them collectively and not as individuals (sections 78 and 89 of the *Education Act*).

On the other hand, since the activity takes place after regular school hours and requires the students to sleep away from home, there is a conflict of rights between the school and the parents (regardless of their ethnic origin). In fact, although sections 1, 3, 14, 78, 229, and 238 of the *Education Act* make this type of activity compulsory if it takes place during school hours, has been approved by the orientation committee, and is offered free of charge, the parents could argue in this case that part of the activity is extracurricular, and nothing can force them to delegate to the school their right of custody, supervision, or education of their child as provided in section 601 of the Québec *Civil Code*. This interpretation seems to be generally accepted in the schools, where participation in these activities is always conditional on the parents' authorization.

Therefore, although strictly speaking the school is not obligated to find an accommodation (this is not a case of adverse effect discrimination), it is valid for it to seek a compromise, because it cannot force the parents opposed to the activity to allow their

children to take part in it.

**b) Are there other reasons, especially psychopedagogical reasons, for trying to find a solution to the problem?**

The school team believes strongly in the pedagogical value of this project and focusses the whole term's teaching around this activity. The non-participation and thus isolation of the students of Haitian origin could therefore have negative psychopedagogical consequences for the students' learning and social integration. In addition, as mentioned in the case study, there are beginning to be disciplinary problems among the students and loss of motivation and even opposition among the teachers.

**Step 2: Validity of various solutions**

The school administration needs to find two types of solution, one to address the parents' longstanding opposition to the winter camp and one to address the growing discontent of the teachers.

With respect to the parents, two solutions have been proposed:

**1. That the parents who do not want their children to participate in the winter camp keep them at home**

This solution is unacceptable because it contravenes legally binding Québec provisions, namely sections 14 and 17 of the *Education Act* on compulsory school attendance.

**2. That the school take responsibility for the children who do not go to the winter camp**

This solution is acceptable from the legal point of view, as long as more than a babysitting service is provided. There is no undue hardship here, because this solution follows from the school's obligation to provide educational services of quality during school hours, as stipulated in the law (sections 1 and 3 of the *Education Act*).

Furthermore, the school is justified in requiring the teachers to fulfil this responsibility in virtue of its general powers and management prerogatives (sections 44 and 49 of the *Education Act*). However, the fact that this solution is within the school administration's room for manoeuvre does not mean that it is necessarily the best one, especially from the psychopedagogical point of view.

With respect to the dissatisfied teachers, only a single solution has been proposed:

**1. To discontinue the project**

This solution is legally acceptable. While the school administration can force the teachers to participate in an educational activity that has been accepted by the orientation committee and that takes place during school hours as prescribed by the *Basic school regulations* (again in virtue of sections 44 and 49), the latter have every right to decide not to take part in special projects that require more time and energy than stipulated in the collective agreement.

Even though this solution could displease the majority of the parents and students who are in favour of the project and an alternative solution would probably be preferable, this one is within the school administration's room for manoeuvre.

Generally speaking, in looking for alternative solutions (if the two preceding ones are not satisfactory), the school administration should take into account--in addition to the effects of the various options on the atmosphere in the school and on its ability to attain its psychopedagogical objectives with respect to the students--the following legal parameters:

- the school administration cannot compel either the parents or the teachers to participate in these kinds of projects;
- the law on compulsory school attendance must be respected;
- the obligation to provide educational services of quality must be respected.

## Step 1: Legitimacy of the problem raised by the parents

### a) Is the school administration legally bound to find an accommodation?

This is a complex borderline case. Some of the parents' allegations concern direct discrimination and not merely adverse effect discrimination (in particular, their statement that the teachers have lower expectations and less positive attitudes with respect to their children). If these allegations are shown to be true, the school administration will not just have to seek an accommodation but to put an end to the behaviour that contravenes sections 10 and 86 of the *Charter of Human Rights and Freedoms* and section 22.4 of the *Education Act* on the obligation of teachers to act in a just and impartial manner in their dealings with students.

The parents' other allegations (cultural bias in the curriculum and in evaluation and placement) seem to involve adverse effect discrimination in that the same standard, which seems neutral, is being applied to the whole student population, but is claimed to have negative effects on certain groups, thus indirectly depriving them of their full and equal right to education. Since neither the school administration nor the teachers dispute the statistics of the Association of Parents of Students from Ethnic or Racial Minorities, the discussion should focus on the causes of this situation and, especially, the validity of the claim that this is a result of a failure to adapt the teaching approach to the cultural or social characteristics of the students.

Given the difficulty of establishing a definite cause-and-effect relationship between the two factors, it is doubtful that the parents could prove the allegation of adverse effect discrimination on the basis of section 10 of the Charter. However, careful attention should be paid to sections 19 and 22 of the *Education Act*, on the obligation of teachers to take into account the characteristics of the students and groups of students entrusted to their care and to adapt their teaching to the specific needs of students in difficulty. These provisions should at least persuade the school administration to seriously study the causes of the situation the parents are complaining about and to try, working with the school team, to propose possible solutions.

### b) Are there other reasons, especially psychopedagogical reasons, for trying to find a solution to the problem?

This case speaks for itself: a substantial group (30 percent) of the school population has below-average marks and an above-average dropout rate. In addition, it is overrepresented in the programs for poor students. It is hard to imagine a school administration that would not be concerned with such a problem from a psychopedagogical point of view. Since the students involved belong to ethnic or racial minorities, there is also a danger of worsening the school's relationship with the community and of reinforcing stereotypes among both the teachers and the rest of the students.

## Step 2: Validity of various solutions

There is one solution being proposed by the parents:

### 1. That a committee made up of representatives of the teachers and the parents of students belonging to the minority groups study the problem

In principle, this solution is acceptable. In virtue of sections 44, 46, and 49 of the *Education Act*, it is clearly within the school administration's responsibility to set up such a committee and even, subject to the observance of the terms and conditions of the collective agreement, to oblige the teachers to take part in it.

The support of the orientation committee for this process, while strategically desirable, is not absolutely required, since the law stipulates that the school administration has an obligation to "consult" this body but not necessarily to obtain its consent. In addition, it is hard to see how the school administration or the teachers could invoke "undue hardship," to refuse to set up the committee, because it would not present any obstacle to the school carrying out its mandates with respect to the students in the majority group, but rather would be positive.

However the committee's room for manoeuvre is limited by the *Education Act*. It may discuss the problem and explore various solutions, but it cannot take the place of the administrative educational authorities in their respective jurisdictions. It is therefore in light of sections 19, 22, 37, 44, 49, 222, 229, 231, 233, and 234 of the *Education Act*, which set out the rights and responsibilities of the Minister, the school board, the school administration, the orientation committee, and the teachers, that it should formulate its recommendations and that the school board and the school administration should judge the appropriateness and the feasibility of these recommendations.

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### CASE 3

#### **Step 1: Legitimacy of the problem raised by the parents' attitude**

(The demand in this case is a "passive" one that appears in the form of resistance to a norm, as often occurs with parents belonging to disadvantaged minorities.)

##### **a) Is the school administration legally bound to find an accommodation?**

The obligation of accommodation on the basis of adverse effect discrimination clearly is not applicable in this case. Even if the parents tried to invoke their right as members of an ethnic minority to maintain and develop their own cultural interests (section 43 of the *Charter of Human Rights and Freedoms*) and were able to prove that corporal punishment was part of their culture (which would probably provoke some discussion within their community!), this economic and social right could not take precedence over the rights guaranteed their child in the Charter and the *Youth Protection Act* (YPA), or especially over the teacher's obligation to report cases in virtue of section 39 of the YPA (see Step 2: Validity of various solutions).

Moreover, even if the parents argued that the overrepresentation of children from their group in the statistics on foster home placements by the Direction de la protection de la jeunesse was a case of adverse effect discrimination, it would not be the teachers' or even the school administration's role to assess the validity of that claim.

##### **b) Are there other reasons, especially psychopedagogical reasons, for trying to find a solution to the problem?**

According to various data in the field of psychopedagogy, it is quite clear that children develop better when the views and standards of school and family with respect to discipline are consistent. The school administration and the teachers therefore have every reason to seek a long-term non-coercive solution in this situation. However, given their extremely limited legal room for manoeuvre in this case, only strategies involving changing the parents' behaviour--and not accommodation by the school--would be acceptable.

#### **Step 2: Validity of various solutions**

Two solutions have been proposed in this case:

##### **1. That the teachers not report cases of corporal punishment to the social worker**

This solution is clearly unacceptable. On the one hand, according to the new Québec *Civil Code*, persons having parental authority no longer have the right to apply moderate and reasonable correction. On the other hand, given the division of federal and provincial powers as defined in the *British North America Act* (1867), section 43 of the *Criminal Code* can only be invoked as a defence in a charge of assault based on the *Criminal Code*.

In addition, sections 38 and 39 of the *Youth Protection Act* stipulate clearly that a child's security or development may be considered to be in danger if the child is subjected to physical ill-treatment through violence or neglect, and that any person, even one bound by professional secrecy, who has reason to believe such may be the case is obligated to report the situation to the Direction de la protection de la jeunesse without delay.

Furthermore, even if the school administration and the teachers have doubts as to the definition of "physical ill-treatment through violence," this is for the Direction de la protection de la jeunesse to judge, and not the school personnel, who must report a case as soon as there are "reasonable grounds" to believe there may be physical ill-treatment.

##### **2. That the teachers adopt a strategy of prevention, negotiating the raising of the students' marks with them in return for extra assignments**

From a strictly legal point of view, this solution, applied in a limited way, may be acceptable, because section 19 of the *Education Act* authorizes teachers to govern the conduct of the group of students entrusted to them and to select methods of evaluating the students' progress. However, it is important to ensure that the raising of the marks is not "automatic" and that the marks given to the parents truly represent the students' progress (section 21.2 of the *Education Act*).

It seems clear from a psychopedagogical point of view that it would be preferable to seek an alternative solution that would bring the parents to gradually change their values and behaviour, because the teachers in this situation quickly come to feel they are

being manipulated by students who are taking advantage of the situation. In addition, in the longer term, negative psychological consequences may result from this complicity between the school and the students behind the parents' backs if not actually in opposition to them.

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## CASE 4

### **Step 1: Legitimacy of the problem raised by the parents**

#### **a) Is the school administration legally bound to find an accommodation?**

The obligation of accommodation on the basis of adverse effect discrimination clearly is not applicable in this case. There is no question of a fundamental right guaranteed in sections 1 to 10 of the *Charter of Human Rights and Freedoms*. Furthermore, it is doubtful that the parents could invoke section 43 of the Charter on the right of members of an ethnic minority to maintain and develop their own cultural interests, since there is nothing proving their demand is cultural in nature. An anthropologist who was an expert on the Portuguese community might see here a specific subculture of a disadvantaged immigrant population from a rural region, but the argument would not stand up from a legal point of view. On the contrary, today's school cultures of Portugal and Québec are very similar, and it is doubtful that all parents in the Portuguese community would agree with these demands.

In addition, it is important to remember that while the *Education Act* allows parents to exercise an influence on the educational project and the student code of conduct by participating in the orientation committee (sections 77 and 78.2), it gives them this right only on a collective basis.

#### **b) Are there other reasons, especially psychopedagogical reasons, for trying to find a solution to the problem?**

Any democratic process based on the delegation of powers has the implicit objective--which is often not attained--of roughly equal participation of all subgroups in the society in the election of those persons who are to represent them. The orientation committee and the school committee are no exception to this rule. In this case, it is clear that the members feel a certain discomfort because they are not representative with respect to ethnic origins. In fact, if it had not been aware that their ignorance of the expectations of the parents of Portuguese origin could have psychopedagogical consequences for their children, the orientation committee would not have decided to organize a social get-together and discussion or to send bilingual invitations to make sure they would come.

Thus, even if the orientation committee has the strict legal right not to take these parents' demands into account and the principal himself would be exceeding his powers by acting without the agreement of the committee (sections 46 and 48 of the *Education Act*), it is clear that a symbolic gesture of recognition and openness toward the parents and students of Portuguese origin should now be made.

### **Step 2: Validity of various solutions**

At first glance, in terms of their content, none of the parents' demands (wearing of uniforms, tighter control on comings and goings in the corridors, and stricter standards of courtesy) contradicts any section or regulation of the *Education Act*.

However, for the school to meet such demands, the orientation committee must be convinced that these measures would not be opposed to the school's educational project. And while principals have a discretionary power to implement concrete pedagogical and administrative measures in line with the orientations determined by the orientation committee (section 46 of the *Education Act*), they cannot adopt measures contrary to the educational project itself.

In this case, if the students of Portuguese origin share their parents' views, the principal could argue that respect for differences among the students (which is part of the educational project) justifies accommodating their values. However, since there is no question of adopting different rules of conduct for students of different ethnic origins, the principal's room for manoeuvre is limited.

In the best case, if he is a good negotiator, he will be able to convince the orientation committee to be more open to some of the expectations of the parents of Portuguese origin, although they are under no obligation to do so, by seeking compromises between the two pedagogical perspectives.

If not, in the short term, all he can do is adhere to the status quo and advise the parents of Portuguese origin to organize to promote their views in the next elections for the parents' committee and the orientation committee.

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## CASE 5

### **Step 1: Legitimacy of the problem that could be raised by the parents**

#### **a) Is the school administration legally bound to find an accommodation?**

Insofar as the wearing of a *hijab* is considered a requirement of the Moslem religion (there is no consensus on the question within the community itself), forbidding a student from wearing it or putting pressure on her not to wear it infringes on her full and equal right to exercise her freedom of religion (sections 3 and 10 of the *Charter of Human Rights and Freedoms*).

These practices may constitute discrimination, because the student would be forced to choose between her right to education and her right to freedom of religion. Furthermore, the school administration should investigate any case of pressure being exercised by teachers, such as telling a student not to come complaining to them if the other students laugh at them. Such a position--especially if it is announced in front of the whole class, comes close to inciting the other students to exercise direct discrimination. It is also contrary to sections 22.3 and 22.4 of the *Education Act*, which stipulate that teachers must take the appropriate means to foster respect for human rights in the students and act in a just and impartial manner in their dealings with students.

Furthermore, if consultation with the religious authorities of the community made it clear that wearing the *hijab* is not compulsory, other rights may still be involved, such as that of members of a minority to maintain and develop their own cultural interests (section 43 of the Charter) or, if it is the student's personal choice, that of expressing their freedom and their beliefs through their dress.

#### **b) Are there other reasons, especially psychopedagogical reasons, for trying to find a solution to the problem?**

Children's moral and psychological development is intimately connected to their attitude to the values of their parents' religious and cultural tradition. Independently of whether the school has a legal obligation to respect the wearing of the *hijab*, it would be hard for a school administration that is concerned with the children's development to ignore the meaning attached to this practice. Sharing this meaning with the other students and encouraging them to respect it are an integral part of the education the school is supposed to give them.

### **Step 2: Validity of various solutions**

Two solutions have been proposed in this case:

#### **1. That wearing the *hijab* be banned or that the students be strongly discouraged from wearing it**

If it can be shown that wearing a *hijab* is a requirement of the Moslem religion, this solution is clearly unacceptable for the reasons stated above. However, if it is only a cultural practice or a choice by the student to express her freedom of belief through her dress, this solution may be valid insofar as the banning of the *hijab* can under certain circumstances be shown to be justified in terms of public order, the general welfare of the students, or respect for democratic values. For example, grounds of hygiene could be invoked to require wearing a bathing cap rather than the *hijab* for swimming.

Limits such as these cannot be imposed by a single teacher (section 19 of the *Education Act* does not give teachers this power), but they can be part of the code of conduct that the orientation committee may establish on the school administration's recommendation in virtue of section 78 of the *Education Act*, and must be approved by the school board.

Nevertheless, given the controversial nature of this issue, it is doubtful whether such rules could withstand the legal challenge they would undoubtedly give rise to.

#### **2. To allow the wearing of the *hijab***

Insofar as wearing the *hijab* is the student's choice, this solution is legally acceptable, regardless of whether or not it is a religious requirement. There is no evidence supporting the teachers' statement that this practice has a negative effect on the student's academic life in the short term or on her social and professional life in the longer term (that may be the case but it is almost impossible to prove a direct cause-and-effect relationship). In fact, as stated in the case study, the Moslem girls gain self-

confidence in school and do well (as well as, if not better than, their "freer" classmates). Thus the wearing of the *hijab* is not contrary to the girls' right to full and equal access to education as guaranteed by section 10 of the Charter.

The question would be much more complex if wearing the *hijab* was imposed by the parents and resisted by the student (this situation would be likely to occur in secondary school, when adolescents from all backgrounds start to distance themselves from family values). In that case, which does not concern us here, it seems doubtful that the parents could require the school to enforce observance of a religious practice they themselves were unable to impose on their child. In addition, the increasingly dominant trend to define children as subjects of law and to define parental authority not as the power of coercion, but as responsibility for education in the gradual exercise of rights and freedoms, would have to be taken into account.

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## CASE 6

### **Step 1: Legitimacy of the problem raised by the students**

(This is a case of passive resistance, which will presumably become active at the meeting between the school administration, the parents, and the students.)

#### **a) Is the school administration legally bound to find an accommodation?**

The obligation of accommodation on the basis of adverse effect discrimination clearly is not applicable in this case. Since the students involved are Latin American Catholics and the sex education course has been approved by the Catholic committee, freedom of religion (sections 3 and 10 of the *Charter of Human Rights and Freedoms*) cannot be at issue. Furthermore, if this is merely a cultural conflict, the scope of section 43 is limited, as we have seen in cases 1 and 4, especially because, here again, it would be very difficult to establish the "cultural" nature of the resistance to the sex education course and there would be no consensus on it in the community.

#### **b) Are there other reasons, especially psychopedagogical reasons, for trying to find a solution to the problem?**

It is clear from the case study that the students are not benefiting fully from the sex education course. It seems unsuited to their reality and even if the principal solved the problem of absenteeism, it is doubtful whether their mere presence in class would enable the attainment of the objectives sought.

In addition, their behaviour in class seems to bother the teachers a great deal, because they have spoken to the principal about it. It is therefore clear that the principal, while not legally bound to find a solution, has very good reasons to try to do so.

### **Step 2: Validity of various solutions**

Two solutions were discussed in the case study:

#### **1. That the students be allowed to be absent from classes that offend them**

This solution is clearly unacceptable in virtue of sections 447, 449, 458, and 461 of the *Education Act*, since sex education is part of the Personal and Social Development program established by the ministère de l'Éducation, which is compulsory. Furthermore, neither the principal nor the school board can exempt students from the course merely because they claim it is opposed to their values. On the contrary, in virtue of sections 44 and 227 of the *Education Act*, they have an obligation to implement the program established by the Ministère. None of the exceptions provided in the law seem to be applicable in this case; they concern students who show, by passing a test, that they have achieved the objectives of a program (section 38, *Basic school regulations for secondary school education*), students who need support in basic language of instruction, second language, or mathematics programs (section 222 of the *Education Act*), or cases in which there are humanitarian reasons or there is a danger of a serious prejudice to a student (section 447 of the *Education Act* and section 78 of the *Basic school regulations for secondary school education*).

#### **2. That the parents, following the meeting with the principal, officially ask him to exempt their children from the course**

In such a situation, *circulaire administrative* AG54-92-001 establishes clearly that, in virtue of section 15 of the *Education Act*, the parents would have to show that they are providing instruction at home equivalent to what is provided in the program. That appears unlikely: the Latin American parents are recent immigrants belonging to a disadvantaged social class, they have little

knowledge of French, and they can be assumed to share their children's reluctance with respect to sex education.

The school administration's legal room for manoeuvre is therefore limited. It must see that the students attend classes, while encouraging the teachers to take full advantage of the room for manoeuvre they have in virtue of section 19(1) of the *Education Act* with respect to the organization of the instruction, subject to the measures established by the school board in application of sections 229 and 237. The teachers can thus take the cultural characteristics of the students more into account while still respecting the objectives of the program.

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## CASE 7

### **Step 1: Legitimacy of the problem raised by the parents**

#### **a) Is the school administration legally bound to find an accommodation?**

This is a borderline case. If the parents can show that Ramadan is a requirement of the Moslem religion (even for children under 12, which is disputed in the community itself), they could invoke their children's full and equal right to exercise their freedom of religion (sections 3 and 10 of the *Charter of Human Rights and Freedoms*). The teachers' refusal to accommodate their students' specific situation resulting from Ramadan would then seem to be a case of adverse effect discrimination or, in the extreme case in which the teachers took it upon themselves to make the children eat or to put pressure on the parents not to have the children observe Ramadan, as direct discrimination.

Furthermore, even if consultation with religious authorities showed that observance of Ramadan is not a religious requirement for elementary school students but merely a cultural tradition, careful attention should be paid to the consequences of sections 19 and 22 of the *Education Act*, on the obligation of teachers to adapt their instruction to the specific characteristics of the students and groups of students entrusted to their care.

In the latter case, the school could express to the parents its concern about the consequences of observing Ramadan on the academic performance of certain students, on condition that this concern is based on facts and real data and not mere prejudice. However, if the parents decided to continue the practice anyway, this would not justify the school administration or the teachers in adopting a "too bad for them" attitude or taking punitive measures. In this case, as in the case of much more questionable practices of some parents of all origins (allowing children to watch television late at night, stuffing them with treats or spoiling them with possessions instead of providing discipline, etc.), they have no choice but to accommodate the children's real situation.

#### **b) Are there other reasons, especially psychopedagogical reasons, for trying to find a solution to the problem?**

The values the Moslem families want to preserve by observing Ramadan (the primacy of the spirit over the body, the importance of the spiritual dimension in daily life, the preservation of tradition and the connections between the generations, self-discipline as a way of building character) are common to all the great religious traditions--even if they do not always put them into practice. As such, they belong to the universal human heritage that all the students should understand and respect without necessarily sharing.

The observation of Ramadan by some students, far from being an obstacle to learning, should be seen as an opportunity for teaching tolerance and openness to difference.

### **Step 2: Validity of various solutions**

Three solutions have been suggested in this case:

#### **1. That the school take direct or indirect action to put a stop to the students' observance of Ramadan**

Whether or not their observance of Ramadan is a religious requirement, this solution is unacceptable for the reasons stated above.

#### **2. That the school merely express to the parents its concern about the consequences of the children's observance of Ramadan on their performance in school**

If their observance of Ramadan is a religious requirement, this solution is unacceptable for the reasons stated above. If it is just a

religious tradition, this solution is legitimate insofar as the school administration's motives are pedagogical.

### 3. That the school not interfere with the students' observance of Ramadan

This solution is acceptable in all cases.

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## CASE 8

### Step 1: Legitimacy of the problem raised by the parents

#### a) Is the school administration legally bound to find an accommodation?

This case raises complex and delicate issues. On the one hand, it is clear that the parents and students demanding the right to be absent without penalty on their religious holidays could legitimately invoke the freedom of religion guaranteed them by section 3 of the *Charter of Human Rights and Freedoms*. In addition, they could argue that the refusal of accommodation was an adverse effect discrimination (section 10 of the *Charter of Human Rights and Freedoms*), because it would force the students to choose between succeeding in school (especially if the school held examinations on the days they were absent) and exercising their freedom of religion. It is important to note that it is not the fact that the *Basic school regulations* set school holidays that in part coincide with Christian religious holidays (in the case of Christmas and Easter only) that may be considered an infringement on the religious freedom of non-Christians, but rather the fact that the latter are not able to respect the requirements of their own religions with respect to refraining from certain activities on religious holidays.

However, it is not clear that, from a strictly legal point of view, the above interpretation would carry. As we have seen above, the jurisprudence is not yet clear on the obligation of accommodation in the area of services (the case would be a good deal clearer if it were about the right of school board personnel to be absent on their religious holidays). Furthermore, the scope of the notwithstanding clauses (sections 726 and 727) of the *Education Act*, which protect certain privileges of the Catholic and Protestant religions in the school system, has not yet been tested in the courts. The validity of the parents or students invoking their freedom of religion varies depending on whether these sections are interpreted restrictively, as applying only to the exception required for the administrative organization of confessional school boards, or more broadly, as applying to all the other aspects of school life, such as the calendar, the educational project, and the code of conduct.

In spite of these reservations, it seems that, while the law does not stipulate that there is an obligation of accommodation, the school board--and not the school principal, who is not authorized to act alone in this area--would be well advised to use the room for manoeuvre provided by various sections of the *Education Act* (see Step 2) to try to find solutions that would accommodate the needs of various religious minorities before they themselves make that demand through the courts.

#### b) Are there other reasons, especially psychopedagogical reasons, for trying to find a solution to the problem?

Even if the school board or the school administration decided not to accommodate the religious diversity of the student body, particularly in the planning of special activities and examinations, it is unlikely that the absences of students belonging to religious minorities would stop altogether. Some students, including good ones, could thus be penalized for absences that would otherwise have no important psychopedagogical consequences.

Furthermore, parents belonging to more recently arrived religious minorities could interpret the discontinuation of a practice that has long been accepted with respect to Jewish and Orthodox Christian students as a message of exclusion or rejection of religious traditions that are farther removed from Christianity. The resulting dichotomy between school and family is not desirable, especially because it would mean the school was failing in its responsibility to the students as a whole to make them aware of the spiritual dimension of life and teach them tolerance.

On the other hand, the situation described in the case study is rather anarchic, and the school administration or the board has every reason to try to find a formula that minimizes the negative effects on the functioning of the school while respecting the fundamental needs of the minorities, which will not be accomplished by ignoring the problem.

### Step 2: Validity of various solutions

Three solutions have been proposed or implied in this case:

### **1. That the school board continue to tacitly recognize the right of the students belonging to religious minorities to be absent on religious holidays, without establishing explicit guidelines**

Although this solution is at the limit of the room for manoeuvre of the school board and the school administration with respect to the interpretation of their obligation to ensure school attendance (sections 14 and 18 of the *Education Act*), it was acceptable in the past because it did not violate the spirit of the *Education Act*. The Act states that there is a problem when a student is absent "repeatedly" and "without a valid excuse" (section 18). Recourse to this solution thus did not prevent the school from fulfilling its mandate to ensure the full and equal right to education to the children entrusted to it.

However, with the increase in the number and the diversity of students belonging to religious minorities--if the teachers' perceptions as reported in the case study are accurate (which the school board should check)--this solution might no longer be acceptable. The absence of clear guidelines on the number and type of religious holidays that are accepted as a valid excuse for absence appears to have led to a rather anarchic situation, which could be considered to constitute "undue hardship" for the school.

### **2. That the school board refuse any longer to take the religious diversity of the school into account when planning special activities or examinations, and no longer accept the holidays of the various religious minorities as a valid excuse for absence.**

Whether or not this solution is acceptable from a legal point of view depends on the interpretation given to sections 726 and 727 of the *Education Act* with respect to their primacy over sections 3 and 10 of the *Charter of Human Rights and Freedoms* (see Step 1). However, in any case, it is doubtful that this is the best solution for the students from the psychopedagogical point of view, or for the school from the point of view of its relations with the parents and the larger community it serves.

### **3. That the school board establish clear guidelines on this question**

In order to maintain control of a situation that could turn into anarchy, the school board has two possible means of action. The first, more explicit, one is provided in section 238 of the *Education Act*, on the school calendar. It allows the board, where there are sufficient concentrations of religious minorities, to set a number of holidays, the dates of which are not fixed in section 32 of the *Basic school regulations for secondary school education*, to coincide with certain religious holidays. The second possibility, which is of a more tacit nature, is to use the room for manoeuvre given the school board in virtue of section 18 of the *Education Act* to interpret the concept "repeatedly absent without a valid excuse"; this would allow the board to define a mandatory procedure for parents wanting their child's absence for a religious holiday to be recognized as justified. The school board could draw on experience in Ontario, where after consultation with various religious authorities in the province, a maximum of three holidays a year were recognized as constituting valid reasons for absence, on condition that the parents or students, depending on the students' age, officially notify the school administration at the beginning of the school year of their belonging to that religious tradition.

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