

Justice for Children and Youth
Submissions to the Ontario Human Rights Commission
Norton Task Force on Disability and Education

Introduction

Justice for Children and Youth is a legal clinic and the operating arm of the Canadian Foundation for Children, Youth and the Law. The clinic provides select legal representation to youth aged 17 and under in the areas of education law, income maintenance, criminal law, family law, mental health law, health law, constitutional law and human rights. The Foundation was incorporated in the Province of Ontario in 1978 as an independent non-profit organization. Since December 1982, the Foundation has received its core funding from Legal Aid Ontario, Clinic Funding Committee, as a community legal clinic specializing in children's law. The Foundation operates the clinic under the name "Justice for Children and Youth".

The Foundation has an Ontario-wide membership comprised of individuals and agencies who work with children and youth or who are committed to protecting and promoting their rights. The Foundation was constituted for the purpose of promoting the rights of children and youth and their recognition as individuals under the law.

Justice For Children and Youth, provides direct legal representation for low-income children and youth . It specializes in protecting the rights of those facing conflicts with the law, parents, schools, and the social service or mental health systems. The Foundation provides summary legal advice, information and assistance to young people, parents, professionals and community groups.

As well as representing children before Special Education Tribunals, and school board disciplinary proceedings, Justice for Children and Youth has been granted intervenor status in a number of cases concerning the human rights of persons under the age of 18, including within the education context. In particular, the Foundation was granted intervenor status at the Supreme Court of Canada in the case of *Eaton v Board of Education Brant County*¹ where the parents argued the school board's right to segregate students with disabilities in special classrooms. Our Executive Director is a co-author of An Educator's Guide to Special Education Law. She and another staff lawyer are the Consulting Editors of Butterworths Consolidated Education Statutes and Regulations of Ontario.

¹ *Eaton v. Board of Education Brant County*, [1997] I S.C.R. 241.

Background

The law as it applies to disabled students in the province of Ontario, had its genesis in 1980 with Bill 82,² which imposed on the school boards certain requirements with respect to the identification and placement of “exceptional students”, along with the delivery of services and programs to those students. The word “exceptional” is used in the *Education Act* to describe students who need special education and generally overlaps with the concept of disability. The rights of exceptional students are further augmented and strengthened by both the *Charter*, and the *Ontario Human Rights Code*. In addition the *United Nations Convention on the Rights of the child* recognizes the rights of disabled children to special care and effective access to education.³

Under the *Education Act*, both statute and regulations, school boards are required to establish at least one Identification Placement Review Committee (“IPRC”) to identify and place students who may have special needs. This process may be initiated by parents or school principal and is carried out with the participation of parents, students who are 16 or older, and students under 16 where appropriate. Once the student is identified as exceptional and “placed” according to that exceptionality, and appropriate individualized education plan (“IEP”) must be created. Should the parents disagree with the identification or placement determinations of the IPRC, they can appeal.

Unfortunately, a growing number of parents and students have found that school boards are unable, or unwilling to meet their legal obligations to provide appropriate educational programs and services for exceptional pupils within their boards.

These submissions are based upon the large number of contacts we have had with parents and students who are having trouble with the public education system. We assist disabled students who are subjected to disciplinary proceedings, when the schools fail to adequately accommodate their special needs. We also help parents and students who are trying to appeal identifications or placements and to access special education services and programs.. Often the disabled student’s access to education is complicated by a denial of the right to attend school based on rigid resident pupil definitions under the legislation or by a refusal of a board to allow a student to attend school all day.

OBLIGATIONS OF THE MINISTER OF EDUCATION

It is the Minister of Education’s legal obligation to ensure that all exceptional children in Ontario have available to them appropriate special education programs and services⁴. The scheme by which the Minister “ensures” that appropriate special education is available requires school boards to submit Special Education Plans (“SEP”) to the Minister indicating what needs the board anticipates and how the boards intend to meet these needs. If the Minister is not satisfied, the Minister can require a school board to amend its SEP. The Minister provides funding to

² *Education Amendment Act* 1980, S.O. 1980, c. 61

³ *U.N. Convention on the Rights of the Child*, Article 23

⁴ *Education Act* R.S.O. 1990, c. E.2, s. 8(3).

school boards that is stated to be for the additional costs of providing special education and the costs of accommodating the needs of students with disabilities. The Minister provides a grant based on the size of a school board's student population to meet the "ordinary" additional costs of providing special education. As well, the Minister provides an Intensive Support Amount ("ISA") of funding based on school board applications that are accepted as demonstrating much higher needs in individual students. The Minister also has regulation-making power which has been used to regulate the process of identifying special needs, determining appropriate accommodations, and governing appeals.

Problems With Delay

1. The Minister can and has made regulations governing identification and placement of exceptional pupils, and governing special education programs and services.⁵

In order to fulfil this obligation, the Minister must ensure that in the identification and placement of students there is an appropriate appeal process. The first level of appeal is to the Special Education Appeal Board ("SEAB"). The decisions of the SEAB are not binding on the school board. If the board decides to ignore the recommendations of the SEAB the parent or pupil must then make a second level appeal to the Special Education Tribunal ("Tribunal") where the decisions are binding on both parties. However, even at this level there are jurisdictional arguments as to whether the Tribunal decisions on programs and services are binding or even as to whether the Tribunal can hear the issues relating to programs and services. When parents have filed appeals on services or programs at the Tribunal, some school boards have been filing applications for judicial review of their decision to hear those appeals. In the end, the courts have not made a decision on jurisdiction because school boards have withdrawn the applications for review after the Tribunal made decisions which were acceptable to the school boards.

The fact that the appeal to the first level is not binding on the school board often wastefully results in a second level appeal and causes extreme delays on the delivery of appropriate programs to exceptional children. Most parents have told us that the first level of appeal is a waste of time. Wasting time may not always be a human rights issue, but many parents have been advised by professionals that the best chance their children have for success is early identification and then appropriate programming. Indeed early identification is a stated obligation the Minister imposes on school boards. If the purpose is to encourage more settlements, even this function duplicates the settlement discussions that are a regular part of the Tribunal process. However, parents of autistic children arrive at IPRC meetings, and subsequent appeals, armed with assessments from health care professionals, along with documented evidence of the necessity of early intervention in order to ensure the best possible chances for integration into mainstream society. Their hopes are dashed when they find an obstructive and drawn out process which seems to ignore the best interests of their child. Delay to them is not a mere inconvenience, but with each month, the chances for a bright future are dimmed, and perhaps, lost. In fact, we submit that delay is not just a

⁵ *Supra*, at s. 11(1).5

continuation of the failure to accommodate, it is an additional instance of discrimination which causes additional harm to the student.

Recommendation 1: The *Ontario Human Rights Guidelines* (“*Guidelines*”) should state that delay is discrimination. Decisions of the SEAB should either be binding on school boards or this level of appeal should be abolished. A two level appeal in which the first level decisions are not binding may result in unnecessary delay which is in itself a form of discrimination especially to special needs children for whom delay may not only mean deferring learning, but also deterioration.

IDENTIFICATION , PLACEMENT, PROGRAMS & SERVICES

Problems with Identification & Placement

2. The *Education Act* s 170(1) para. 7 states that every board must provide, or enter into agreements with another board to provide special education programs and services for it exceptional students.

Many boards presently deny special needs children the accommodations that they require, because the school boards say they lack funding. Even where school boards receive ISA funding because of a successful application documenting the high needs of an individual child, that child will not likely receive the full benefit from that ISA funding. This is because the Ministry does not require ISA funding to be spent on the student whose application brought the funding to the school board. While school board flexibility is desirable so that boards can, for example use an aide to support other students if the student whose application funded the aide is sick, the Minister’s funding scheme does not ensure that additional ISA funding will be used to meet the needs of students with disabilities. As a result, schools are sharing the funding from one child’s ISA among other children to fill gaps. Indeed, a student whose disabilities generate additional ISA funding for a school board may enter hospital for a period of time and then be refused re-entry to school, because the supports have all been re-assigned to other students.

Recommendation 2: The Minister must, in order to avoid discrimination and to fulfil the human rights obligation to accommodate and the *Education Act* obligation to ensure appropriate programs and services, require school boards to ensure that each child with a disability receives the full benefit of the ISA funding obtained on account of their particular needs. Re-direction of resources should be permitted to occur only when those needs have been fully met. Ministerial delays in processing ISA applications and advancing ISA funding to school boards should be described as discrimination in the *Guideline*, so that the boards do not feel the need to share one child’s ISA funding with another. The *Guidelines* should state that children whose needs have generated ISA funding must have those needs met through the full benefit of their ISA funding.

3. Special needs students are currently waiting up to 18 months for assessments that will inform the IPRC in its determination of the nature of the student's disability, and therefore of the kind of accommodations that have to be made in order for the student to have equal educational opportunities. It is well documented that for many "exceptional" children, early identification and proper placement are critical not only to their long-term academic success, but also to their self acceptance, dignity and self-worth, and ultimately to their success as adults, both economically and socially. Resources must be available for assessing and testing of students in a timely fashion. As it now stands, children whose parents who are able to pay for private assessments, may have an advantage over those whose parents with insufficient financial resources, at least in school boards which trust external assessments.

While a parent who requests an IPRC process must be informed within 15 days of the approximate date of the IPRC meeting, there is no timetable for when the meeting itself must occur.⁶ Many school boards will not schedule the IPRC meeting until after the assessment data has been received. The timely intention of this provision is completely undermined by failing to require school boards to hold IPRC meetings within a short and fixed time. We submit that IPRC meetings should be convened within 30 days of a request initiating the process. Such a proposed timeframe is, in fact, much longer than the permitted time frame between a student misbehaviour and an expulsion hearing.

Some of our saddest work relates to children with disabilities who are treated by the school as if they had controllable behavioural problems. Often this would result in the child receiving multiple suspensions, and the accompanying loss in self esteem before they were assessed as having a disability. This is common for children with syndromes such as *Asperger's or Tourette's*, where a child's ability to function normally in some aspects of schooling disguises the fact that they have an "exceptionality" which requires accommodation. The damage to the child, who is punished and stigmatized for behaviours which they cannot control, is inestimable.

Recommendation 3: The *Guidelines* should indicate that delay in assessment leading to an appropriate placement is in itself discrimination. The *Guidelines* should set out reasonable , but short, timeframes for IPRC meetings to be convened.

4. Delays are also a problem even after students have been assessed, identified and placed by the IPRC Committee. Students are often told that even though the IPRC has determined that they are to be placed in, for example, a self-contained class for students with a communications exceptionality, no space is currently available, and they may have to wait many months for the placement legally determined to be appropriate accommodation for the student's disability. To avoid this apparent disregard for the law, some IPRCs make only conditional placement determinations. For example, the IPRC determines that a student is exceptional, that the disability is a hearing impairment and autism, and that the placement is

⁶ Identification and Placement of Exceptional Pupils O.Reg. 181/98 as amended, s. 14(6)

a self-contained class “if or when there is a placement available”. To our knowledge, an IPRC never actually determines what type of placement would best accommodate the student’s needs; rather it selects what it thinks is the best of what the board chooses to offer. This failure to address the actual needs of the actual student the board is mandated to accommodate is particularly acute among students who have been identified as having a “behavioural” exceptionality or a learning disability or autism (usually called a communications disorder by school boards).

Recommendation 4: The Guidelines should indicate that delay in implementing a legally determined, appropriate placement is discrimination.

5. Access to appropriate special education is even more difficult for disabled students who were not born in Ontario and are not Canadian citizens. Although legally entitled to attend school in Ontario, such students suffer additional discrimination because their disabilities make it more difficult or more costly to provide them with appropriate educational programs. We have had calls from parents of children who are either convention refugees, and even one who was landed who were told by the local school board officials that they must pay visa student fees for their children, or get a letter of permission from Citizenship & Immigration, before they would be allowed to attend school. We have worked with a parent of a disabled student who had informed the school board in advance that her child was disabled and would need accommodation. The child was a landed immigrant; but, the board, without legal authority, demanded that the parent get a student visa, or permission from Immigration and Citizenship before the school board would allow the student to register. Needless to say, this kind of demand, which has no legal basis, at best delays entry into school for the disabled student, and at the worst discourages some parents who do not have status from asserting their child’s right to be educated.

Recommendation 5: The *Guidelines* should indicate that all exceptional children in Ontario are entitled to access to appropriate programs and services regardless of race, ethnic origin, disability, without the payment of fees.

Problems with Services & Programs

6. The school boards are required to prepare a Special Education Plan (“SEP”) for the Minister of Education. The SEP sets out the numbers of students who have special needs, what their identifications is, and what plans the board has for teaching them. However, there is no requirement that the board identify what they need in order to provide appropriate programs and services. The focus of the board should be on the needs of each and every exceptional student, rather than on what the boards plans to offer based on what resources they have at hand and what funding they believe they will receive. For the Minister to discharge the human rights and Education Act obligations to ensure appropriate special education services and programs for all exceptional students in Ontario, the Minister must require school boards

to submit plans which set out the anticipated needs, not the anticipated available resources. It then becomes the Minister's obligation to ensure that the needs are met.

Recommendation 6: The *Guidelines* should state that it is discrimination and a failure to accommodate for a school board to submit a SEP based on anticipated resources rather than anticipated needs of disabled students. To ensure that both the Minister and school boards can deliver appropriate programs and services for all their exceptional students.

7. Regulation *Special Education Programs and Services* R.R.O. 1990, Reg.306 requires school boards to establish at least one Identification Placement Review Committee, for the purpose of determining whether students are exceptional, identifying that exceptionality, and deciding an appropriate placement based on the exceptionality. The IPRC committee can make recommendations on programs or services (and must, on the request of a parent), but those recommendations are not binding on the principal and or special education staff who must create an Individual Education Plan ("IEP") within 30 days of the IPRC determinations.⁷

The IPRC Committee is in the best position to make recommendations on programs and services since it has heard all of the information about the student presented to it by both the parents and by the principal and school. It has also heard what placement the principal and parents think is appropriate. It has almost certainly heard a great deal about the programs and services that will be provided to make the placement appropriate. It will have seen or heard an educational assessment of the child and may have heard medical and psychological evidence as to the child's disability and needs, and as to the problems the student may encounter in an educational setting. It is very disturbing for the parent to be told on one hand that their child needs a particular program or service in order to have an equal chance at educational opportunities, and then later be told by the principal that the school has no intention of providing those programs or services.

Recommendation 7: The recommendations of the IPRC should be binding on the principal and staff and included in the ensuing IEP, although the IEP is subject to on-going assessment and review as the student's needs change. The *Guidelines* should specify that decisions about what programs and services will be provided are to be made in the best interests of the child, in order to ensure that appropriate accommodation is made so that each student has an equal opportunity to meaningfully access education.

⁷ Identification and Placement of Exceptional Pupils O.Reg. 181/98, as amended, s. 6(2) – (8)

8. A parent can appeal the identification and placement decided by the IPRC⁸, but the IEP, and programs and services to be provided cannot be appealed to the SEAB or subsequently the Special Education Tribunal..

Once an identification and placement are decided, an Individual Education Plan must be developed by staff, in consultation with the parents. The IEP s. 1(1) : “*includes a plan containing specific objectives and an outline of the special education programs and services that meets the needs of the exceptional pupil.*” However, without a clear right of appeal, and without the backing of the IPRC committee, parents have little recourse when the IEP fails to come up with a plan which adequately addresses the needs of the disabled pupil.

Recommendation 8: The *Guidelines* should specify that, to avoid discrimination, the IEP must include all the programs and services necessary to accommodate the student’s needs. It should be subject to the same scrutiny and rights of appeal by parents and students as the IPRC.

9. Under the present policy children with special needs, who change school in mid year will not necessarily have their legal entitlement to education (appropriate to their needs) met because of lack of funding at the new school. Since the ISA funding does not attach to the student, disabled students often find that they do not receive consistent or appropriate programs and services when they move. This is not only the case when students move from one school to another, but also when they move within the school board district. It is quite common for our office to receive calls from parents complaining that their child had an educational assistant at their first school, which they believed was a necessary aid for their child, only to find that when they moved they were told either it was not necessary, or that there were insufficient funds to cover the cost of an assistant. This is not only bewildering for the parent, but can be quite traumatic for the child who must try to adjust to both a new school and a lack of necessary resources.

Recommendation 9: The *Guidelines* should make it clear that ISA funding should follow the student and flow to a new school board when the child moves, thereby ensuring that the child’s needs are met immediately without having to wait for a new ISA application, when the student moves. School boards must ensure that no portion of ISA funding received because of the needs of a particular student is used for another student unless the needs of the first student are being fully accommodated.

FAILURE TO ACCOMMODATE

Failure to Accommodate under the Safe Schools Act

⁸ Ibid., s. 26(1)

10. The implementation of the *Safe Schools Act* (amending the *Education Act*) by the government of Ontario was an effort to address the issues of student behaviour, discipline and safety. Sec. 306 (1) lists a series of infractions for which a suspension is mandatory. Similarly, sec. 309(1) lists the infractions for a mandatory expulsion. S. 306(5) and & 309(3) state that there are mitigating factors which may be taken into account to eliminate the mandatory nature of the suspension or expulsion. However, neither subsection explicitly identifies disability, as a mitigating factor. Furthermore the sections do not prohibit discrimination since they still permit the suspension or expulsion of disabled students for conduct that is intrinsic to the disability. The government's punitive approach towards school discipline has created an atmosphere in which principals are more likely to contact the police, expel and/or suspend students, rather than carefully consider the actions of the student within the context of his or her disability. The language of accommodation does not appear within the *Safe Schools Act*, nor within the manuals of most boards. While inability to control one's conduct or inability to foresee the consequences are mitigating circumstances, the only legal difference is that otherwise mandatory suspension and expulsion are not mandatory. There is no regulatory requirement to accommodate rather than discipline.

Since the implementation of the *Safe Schools Act* in September 1, 2001 Justice for Children and Youth has noted an increase in the number of parents of students, and students reporting suspensions and expulsions to our offices. More specifically, there has been an increase in the number of reported cases of suspensions and expulsions by students identified by their particular boards of education as "exceptional". Quite often students are expelled or suspended for the very behaviour which makes them exceptional. For example, in two recent cases parents of students with Turrettes Syndrome reported to us that their children were being disciplined for swearing (as mandated under s.306(1)(4)), a behaviour which is beyond their control. In both of these cases, the student had been identified as exceptional through the school board's IPRC process.

In discussions with principals, and sometimes supervisory staff, it is clear that they are not aware of the need to apply basic human rights when determining appropriate action to take when disabled children violate school behaviour codes.

Recommendation 10: The *Guideline* should state that imposing disciplinary consequences upon disabled students unless it would cause undue hardship to accommodate the disability to the point of undue hardship. Discipline imposed for conduct resulting from a disability should be defined as discriminatory.

Accommodating Disabled Students Who Display Uncontrollable Violent Behaviour

11. The number of exceptional students who exhibit uncontrollable violent behaviour as a consequence of their disabilities may be increasing. Teachers do need tools to deal with the behaviour of such students in order to protect themselves, the student and others in the classroom. Teachers have the legal authority to use force for self protection, protection of

others and to carry out the legal duty to maintain order in the classroom.⁹ The obligation of the school board and staff remains to exercise a standard of care towards students that a prudent parent would exercise.¹⁰ For the exceptional student who exhibits violent behaviour, arising out of a disability, the educator must remember that that student has the same rights as other exceptional students,¹¹ including the right to be accommodated for his or her disability.

Accommodation of the disabled student would suggest a philosophy that begins with the recognition of the rights of students and the need to train staff to de-escalate the situation. This approach found much favour in a recent inquest into the death of a 13-year-old boy who died in a group home while being held in a face down restraint.¹² The recommendations made by the jury, although mainly applicable to the child welfare system, should be of interest to all persons caring for exceptional children who have behaviour that can become violent. To ensure appropriate accommodation, standardized training is essential across sectors, not just for those providing residential care for children.

Recommendation 11: The *Guidelines* should address the issue of accommodation, of students with behaviour problems. The prudent approach to dealing with students who may exhibit physically violent behaviour is to establish a de-escalating protocol which provides for documentation of such incidents, plans (in the IEP) for dealing with students' behaviours and training of staff.

Use of Isolation for Students with Disabilities

12. Justice for Children and Youth is aware of at least two school boards in which a primary school used an in-school “behaviour” room to isolate students whose conduct was not acceptable. In at least one of these schools parents were unaware of the practice. In another, the room has been used for lengthy periods of time contrary to expert medical recommendations.

The *Child and Family Services Act*¹³ recognizes that putting a child into forced isolation is such an extreme measure, that any agency that uses isolation must be licensed and conform to a series of regulations. For example, the child must be likely to harm himself or another in the immediate future, and there must be no less intrusive, practicable method. Further, they

⁹ *Criminal Code*, R.S.C. 1985, Chap. C-46, ss. 25, 27, 34, 35, 37, 38, 39 and 41.

¹⁰ *Thomas (Next Friend of) v. Hamilton (City)* (1994), 20 O.R. (3d) 598; *D.H. (Public Trustee of) v. S.A.H.*, [1998] B.C.J. No. 1388 (QL) (B.C.S.C.).

¹¹ B. Bowlby, et al., *supra*, at p.180.

¹² Inquest into the Death of William Edgar, Office of the Chief Coroner, Ministry of the Solicitor General, June 19, 2001 to September 6, 2001

¹³ R.S.O. 1990, c.C.11, *Secure Isolation*, ss. 126-128

must ensure that the child in isolation is subject to continuous observation by a responsible person. Furthermore, in only the most extreme situations, and only with the permission of the Director of the facility, shall a child under 12 years be subject to secure isolation.

Time out is a common and acceptable practice by parents and teachers as a method of redirecting a child who may be misbehaving. Forced isolation (by which a child is locked in or otherwise forced to remain in a room alone) is a much more intrusive and controversial response to a child who is out of control.¹⁴ It is never to be used as punishment. We are especially concerned about the use of this method on a disproportionate number of exceptional students.

Recommendation 12 : The Guidelines must specify that all programming for students with behavioural disabilities must be the least restrictive, least intrusive programming that accommodates the needs of the student. All restrictive interventions, such as isolation must be documented and reported.

RECOMMENDATIONS TO THE ONTARIO HUMAN RIGHTS COMMISSION

Delays in Complaints

13. As previously stated, delay for young people trying to access equal educational opportunities, is in itself discriminatory. As numerous studies indicate, education for all children, but in particular for children with disabilities is more effective when started at an early age. For disabled children, a necessary part of education is to have their differences identified early on, and then to have those differences accommodated through appropriate programs and services. Children experience time differently than adults, for the disabled child a short time in an inappropriate setting where they cannot possibly succeed can seem like a lifetime. Furthermore, a student who turns to the Human Rights Commission for help in receiving appropriate education accommodation may be nearly finished school or have dropped out by the time a complaint can be resolved in the normal course. The remedy may be useless by the time it is ordered. We therefore submit, that not only educators, but also the Ontario Human Rights Commission itself recognize that difference by offering a special fast track for disabled students and their parents who turn to the Commission for help in redressing the violations of their rights.

Recommendation 13: The Human Rights Commission should create an expedited track for all education complaints with respect to access to services and programs, and all other issues of accommodation, Just as an expedited track was created by the Commission for HIV-AIDS based complaints, there should be an expedited track for complaints related to children with special education needs, as delays can be tragic and lead to a hollow process.

14. The Ontario Human Rights Commission does not allow students between the ages of 16 and 18 years to file complaints without the aid of a guardian. However, there is no such restriction for similar aged people when filing complaints in respect to discrimination in accommodation. Under the *Education Act* regulations students under the age of 18 years, but over 16 years, are allowed to partake in the IPRC process, including appeals¹⁵. Further, in *Eaton*, the Supreme Court of Canada recognized that a student's rights and interests are separate from those of the parent. The Court noted that it is legally unsound to assume that parents will always make special education decisions in their child's best interests.¹⁶ The *U.N. Convention on the Rights of the Child* provides that children must be heard from in any judicial or administrative proceeding which affects the interests or rights of the child.¹⁷

Young people who have attained the age of 16 years have the right to withdraw from parental control, and many student have because of abuse, or because of circumstances beyond their control such as the death of their parents. Further, some 16 year olds arrive in this country as unaccompanied refugees. We are asking the Commission to grant these young disabled people the right to file complaints in their own right where appropriate, rather than discouraging them by requiring a guardian to act on their behalf. The Commission should not encourage stereotypical assumptions about age. Unless the law requires, it should eliminate a minimum age in its practices for filing complaints. The test should be competency, not age.

Recommendation 14: The Ontario Human Rights Commission to allow 16 year old students to file complaints in their own right at the Commission.

CONCLUSION:

This Task Force is a unique opportunity for the Ontario Human Rights Commission to address some of the most important issues facing young disabled Ontarians. Education not only provides the best opportunities for "exceptional" students to achieve success in their chosen career paths, but it also gives many the first opportunity to experience how society will react to their disability. The school environment can provide a positive experience, where the student grows not only in academic skills, but also in self esteem, as their particular difference is understood

¹⁵ O. Reg. 181/98 ss. 5 and 15 (8)

¹⁶ *Eaton v. Brant County Board of Education*, [1997] 1 S.C.R. 241, at pp. 278-79

¹⁷ Article 12

and accommodated. It is also important that students who are not “exceptional” learn that their disabled classmates deserve respect and equal opportunities. Unfortunately, all too often this is not the case. Justice for Children and Youth has received numerous complaints from parents, stating that their children are being denied equal educational opportunities because of their disabilities. The parents are frustrated; the young people are demoralized as a result.

For many young people and their parents, the process of trying to access the education system is an uphill battle which they do not feel equipped to tackle. It is clear that many of the problems are systemic, and therefore, the Human Rights Commission’s expertise and powers can best be used to address these problems. By developing specific guidelines, the Commission will not only clarify the duty of the education system as a whole to provide equal access, but can also give more particular information on how the right to equal access is to be interpreted in the education context. This will help educators, as well as parents and students who often find that such terms as “equal access” and “accommodation” are too vague, or without content, unless there are more specific guidelines interpreting how those principles are to be applied.

SUMMARY OF RECOMMENDATIONS:

Recommendations For the Commission's Education Guidelines

1. The *Ontario Human Rights Guidelines* (“*Guidelines*”) should state that delay is discrimination. Decisions of the SEAB should either be binding on school boards or this level of appeal should be abolished. A two level appeal in which the first level decisions are not binding may result in unnecessary delay which is in itself a form of discrimination especially to special needs children for whom delay may not only mean deferring learning, but also deterioration.
2. The Minister must, in order to avoid discrimination and to fulfil the human rights obligation to accommodate and the *Education Act* obligation to ensure appropriate programs and services, require school boards to ensure that each child with a disability receives the full benefit of the ISA funding obtained on account of their particular needs. Re-direction of resources should be permitted to occur only when those needs have been fully met. Ministerial delays in processing ISA applications and advancing ISA funding to school boards should be described as discrimination in the *Guideline*, so that the boards do not feel the need to share one child’s ISA funding with another. The *Guidelines* should state that children whose needs have generated ISA funding must have those needs met through the full benefit of their ISA funding.
3. The *Guidelines* should indicate that delay in assessment leading to an appropriate placement is in itself discrimination. The *Guidelines* should set out reasonable , but short, timeframes for IPRC meetings to be convened.
4. The *Guidelines* should indicate that delay in implementing a legally determined, appropriate placement is discrimination.
5. The *Guidelines* should indicate that all exceptional children in Ontario are entitled to access to appropriate programs and services regardless of race, ethnic origin, disability, without the payment of fees.
6. The *Guidelines* should state that it is discrimination and a failure to accommodate for a school board to submit a SEP based on anticipated resources rather than anticipated needs of disabled students. To ensure that both the Minister and school boards can deliver appropriate programs and services for all their exceptional students.
7. The recommendations of the IPRC should be binding on the principal and staff and included in the ensuing IEP, although the IEP is subject to on-going assessment and review as the student’s needs change. The *Guidelines* should specify that decisions about what programs and services will be provided are to be made in the best interests of the child, in order to ensure that appropriate accommodation is made so that each student has an equal opportunity to meaningfully access education.

8. The *Guidelines* should specify that, to avoid discrimination, the IEP must include all the programs and services necessary to accommodate the student's needs. It should be subject to the same scrutiny and rights of appeal by parents and students as the IPRC.
9. The *Guidelines* should make it clear that ISA funding should follow the student and flow to a new school board when the child moves, thereby ensuring that the child's needs are met immediately without having to wait for a new ISA application, when the student moves. School boards must ensure that no portion of ISA funding received because of the needs of a particular student is used for another student unless the needs of the first student are being fully accommodated
10. The *Guideline* should state that imposing disciplinary consequences upon disabled students unless it would cause undue hardship to accommodate the disability to the point of undue hardship. Discipline imposed for conduct resulting from a disability should be defined as discriminatory.
11. The *Guidelines* should address the issue of accommodation, of students with behaviour problems. The prudent approach to dealing with students who may exhibit physically violent behaviour is to establish a de-escalating protocol which provides for documentation of such incidents, plans (in the IEP) for dealing with students' behaviours and training of staff.
12. The Guidelines must specify that all programming for students with behavioural disabilities must be the least restrictive, least intrusive programming that accommodates the needs of the student. All restrictive interventions, such as isolation must be documented and reported.
13. The Human Rights Commission should create an expedited track for all education complaints with respect to access to services and programs, and all other issues of accommodation, Just as an expedited track was created by the Commission for HIV-AIDS based complaints, there should be an expedited track for complaints related to children with special education needs, as delays can be tragic and lead to a hollow process.
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