



7th Annual Advanced Issues in Special Education Law

by Patricia O'Connor, Integrated Autism Consulting

AT THE 7TH ANNUAL ADVANCED Issues in Special Education Law, held at Osgoode Professional Development Centre in October, 2012 the agenda was divided into six sections. The majority of speakers were lawyers and superintendents from school board across the province. Autism Ontario had representatives at the workshop and here are some of the highlights of one of the sessions.

Understanding Human Rights Applications and Special Education Tribunal Appeals was the first session and it was very informative. Paul R. Howard from Shibley, Righton, LLP, Barristers and Solicitors, referred to the litigious nature of many parents and discussed in some detail Regulation 181.98 - Section 57. The details of the IPRC Appeal process were reviewed and some of the key considerations were noted.

- IPRC decisions place identification and placement as priorities.
- Services and programs may be discussed and must be discussed, at the parents request.
- The committee makes recommendation only.
- School boards are advised to make a record of the discussion that occurs when parents address programming and services needs and were further advised not to make promises.
- The time period to appeal an identification or placement decision is 30 days.
- When an appeal is filed, the current placement remains stayed and the new placement cannot be implemented.
- When educators use professional judgment, it is much easier to defend in court.
- If school boards go into “appeasement mode” it is much more difficult to defend legally.

Special Education Appeal Board

- This is the initial step in the process and involves an informal meeting/discussion involving representatives from both sides.
- Lawyers should not be involved at this point, but if parents have “lawyered-up,” the school board usually does the same.
- A written report is delivered to the school board and within 30 days a decision regarding the recommendations is provided.
- The board is not limited to the actions that the appeal board has recommended.
- If parents have expressed dissatisfaction with the decision in respect to identification or placement, they may appeal to the Special Education Tribunal.

Special Education Tribunal

- The Special Education Tribunal is a social justice body. A website is available for the public: <http://www.oset-tedo.ca/eng/members.html>.
- This body can dismiss or grant the appeal.
- Both parties have legal counsel, at this point, similar to a trial.
- Decisions are made and recommendations are provided.
- The decision of the Special Education Tribunal is final.

Human Rights Tribunal

- When placement decisions are being considered, dovetailing of the Human Rights legislation naturally occurs since there is a focus on the fundamental notion of the duty to accommodate. “Special education is all about finding the appropriate accommodation for students with disabilities.” (See *Campbell v. TDSB*, 2008 HRTO 62).
- The “Best Interests of the Child Test” is the legal standard.
- *Eaton v. Brant County Board of Education*, 1997, 1 S.C.R. 241, the Supreme Court of Canada recognized this test for determining placement.
- This case provides the road map for placement decisions based on Human Rights.
- Does the placement focus on the strengths and needs of the child and meet the intellectual, physical, behaviour and social emotional needs?

The closing discussion in this session focused on how to avoid having to place proceedings before the Human Rights Tribunal of Ontario. Mr. Howard reminded participants not to forget the global picture and provided some positive and negative uses of documentation. He described confirming dates of meetings and agreements and commitments by parents as being positive uses, while retaliation, editorialization and venting as being negative uses. He reminded participants to always assume that a Tribunal or Court could be reading your documentation and that e-mails never die. He reminded school boards to listen to the parents, provide validation and assure that they have been afforded all the participatory rights, and attempt to ensure that Tribunals are not commenced in the first place. Finally, he reminded all participants that when the fog of litigation descends, not to forget your *raison d'être*, the child.



Patricia O'Connor has been involved in the field of special education for most of her 34-year career. She has recently organized the Autism Advocacy Network in the province. This group of professionals provides skilled advocacy services to parents and interested parties. Information can be obtained on her company website: www.integratedautismconsulting.com. ■



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