# Report to the Toronto District School Board Special Education Advisory Committee

From SEAC Chair David Lepofsky for the November 6, 2017 TDSB SEAC Meeting

Date: November 1, 2017

By: David Lepofsky, CM. O.Ont,

Chair

Toronto District School Board Special Education Advisory Committee

## 1. Introduction

Our November 6, 2017 SEAC meeting is going to give us a good chance to finish off some items of business that have been on our agenda for some time, and to set our priorities for the remainder of this SEAC term up to the end of 2018.

## 2. Finishing Motion #5 on Inclusion

There are two small parts of Motion #5 (re Inclusion at TDSB) remaining for us to now address. I wish to here propose for your consideration ways we can address them quickly and easily, if this meets with the approval of our committee.

### a) Motion #5 Recommendation 3(a)

Last spring we had a long and exhaustive discussion on the wording of Motion #5 Recommendation 3(a). Around the SEAC table a wide range of different views were expressed. I offer a solution that one SEAC member suggested to me, which I think is an elegant and easy resolution. I hope it will appeal to most of us if not all of us.

Let's not try ourselves to come up with an all-inclusive comprehensive wording formula on when a student with special education needs will be placed in a regular class or and when he or she will be placed in a special education class. Ontario law already directs how this is to be decided. The Education Act and its regulation, in the Ontario Human Rights Code and decisions under it, in the Ontario Human Rights Commission's "Guidelines on Accessible Education", and in the Canadian Charter of Rights and Freedoms (which guarantees equality to people with disabilities) together lay down the test for deciding for each student.

I therefore encourage you to consider the following wording:

Motion #5 Recommendation 3(a) should read:

3(a) A decision at TDSB on whether a student with special education needs will receive his or her education in a special education class, instead of a regular class, should only be made with the voluntary and informed consent of the student's family, and in accordance with the Education Act, the Canadian Charter of Rights and Freedoms and the Ontario Human Rights Code.

If this wording is agreeable, the heading for Motion #3 Recommendation 3 can be changed to read:

"Regular Class or Special Education Class”

Originally, that heading had read:

"Comprehensive Inclusion Strategy Should Make Placement of Students with Disabilities in a Special Education Class a Last Resort"

It would help us manage the time at our upcoming meeting for SEAC members to share their thoughts on this suggestion via email. If anyone wants to look at the 4 other options for wording Recommendation 3(a) that we had distilled in the spring, and on which SEAC members had a range of different views, check out my SEAC Chair's report for our June 5, 2017 meeting.

### b) Motion #5 Recommendation 7 (Congregated Sites)

Last June, SEAC received an informative presentation on behalf of students at one of TDSB's schools for students with special education needs, the Beverly School. At the end of that meeting, SEAC passed a motion to withdraw and reconsider its Motion #5 Recommendation 7, which pertained to congregated sites. I now propose not to bring Motion #5 Recommendation 7 back at this meeting, to be considered in the context of Motion #5, which addresses the topic of inclusion.

Later in this report I set out a proposal for our future SEAC priorities. One of these concerns our looking at the range of services, supports and programs that TDSB offers for students with special education needs. What we heard from the Beverley School's parents, among other things, was the message that their children were receiving good programming at that school, that they could not find elsewhere in TDSB schools. As we look further into the different programs offered at TDSB, in connection with that priority topic, it will be worthwhile for us to explore whether the program and services offered at some or all of the congregated sites should also be offered in other schools at TDSB, to let more students also benefit from them.

**3. Proposed SEAC Motion #6: TDSB Policies, Procedures and Practices on refusals to Admit a Student to School**

We will again have on our agenda for this meeting the issue of what policies, procedures and practices TDSB has for using the power to refuse to admit a student to school, (sometimes called exclusions from school), especially as this applies to students with special education needs. I am again circulating the draft Motion #6 for our discussion at this meeting. We have not had an actual discussion on the wording of this draft motion, so I aim for that to take place at our November 6, 2017 SEAC meeting.

I address this issue in detail in my September 26, 2017 SEAC Chair's report, written in preparation for our October 2, 2017 SEAC meeting. I understand that TDSB staff will have an update for us on this topic, which we will receive before we discuss the draft motion itself. I have asked TDSB staff to circulate a written update to us on this topic, in advance of our upcoming SEAC meeting, to help SEAC members prepare for the meeting.

It would be helpful for the TDSB staff written update to include statistics on the use of the refusal to admit power at TDSB, and an update on anything TDSB has presented to the trustees on this topic since we raised it last May. As of the date I am writing this, I have received no word that the TDSB trustees have considered this issue, or that TDSB staff have made any report to TDSB on this issue, or have proposed any policy on this issue for the trustees to consider.

I raised this "refusal to admit" issue at the TDSB's Program and School Services Committee meeting on May 3, 2017. I believe that the audio of that presentation is available on the SEAC website, including the trustees' discussions arising from it. In that audio, TDSB Director of Education John Malloy said this in response to a trustee's question about the refusal to admit issue that I raised on SEAC's behalf:

*"One of the things that Executive Council has spent time on in the last while is the need for clarity, as it relates to the procedures. And we're going to do that, whether there's a direction or not. We see this as procedural, one that does need to be tracked, one that does need data collected, and we're already in process to make that happen."*

A trustee asked Director Malloy when a report would be brought forward. He responded:

*"We are planning to bring forward a number of the strategic work that we've been doing in relationship to special education, even though this is not a special education issue, I want to be clear, but we are tracking towards June for when we'd like to have all of this information going forward. I see it as distinct from special education report, but as you know, we are bringing in a comprehensive strategic special education report at that time to this Committee."*

## I should note that based on the excellent presentation on the "refusal to admit" issue at SEAC's February 2017 meeting, the issue of the use of the power to refuse to admit a student to school is, for practical purposes, very much a special education issue, as we were told it is disproportionately used on students with special education needs.

## 4. Proposed List of SEAC Priorities Up to the End of 2018

Here are 10 broad priority areas that I am proposing for SEAC's attention up to the end of 2018. They are based on a distillation of the spectrum of issues and questions that SEAC members put on the table at our September and October 2017 meetings. These are not listed in order of importance, or in the order that we would address them at SEAC.

When these priority items refer to "students with special education needs", it is meant to also include, as well, students with any disability that is not covered by the definition of "exceptionality", such as students with mental health needs who do not have an identified "behaviour" exceptionality.

Various SEAC members identified a need for up-to-date data, both on budget and on the numbers and breakdown of students with special education needs. I am not separately listing this. Rather, that underpins everything we will be doing. We need that information now, and on an ongoing basis, no matter what priority item topic we are addressing.

Before our November 6, 2017 meeting, please feel free to share by email any changes or additions to this list. I can see what I can do with any of that email feedback, before our November 6, 2017 SEAC meeting. I propose at our meeting that we consider approving this list (with any changes that may be approved) in principle. This is not a rigid list. Of course, it will always be open to us to add new topics that come up along the way.

1. Implementation and follow-up on SEAC's 5 Motions on reform to special education (which, under Motion #2, includes the SEPRC process)
2. TDSB budget as it concerns students with special education needs, and how it is distributed
3. The range of specific programs, Services, and supports (including specific intensive support programs, regular classroom supports, speech pathology, occupational therapy etc) offered to students with special education needs, and how these are fairly and equitably distributed across TDSB schools
4. Staff training on special education needs (including all staff, not just teachers)
5. Monitoring and accountability, including, where appropriate, certification, of all levels of staff within TDSB for serving students with special education needs
6. TDSB programs and services aimed at Leading to or transitioning to post-secondary education and/or employment
7. Ensuring that TDSB Equity programs, plans and activities fully and equally include and cover the needs of students with special education needs
8. Refusals to admit students to school
9. Ensuring safety for students with special education needs
10. Bus transportation issues.

There was a request from one or more SEAC members to learn about Section 23 programming. It is not clear to me that this topic involves students with special education needs. Of course, even if it is not, it may always be helpful to get background information on this, e.g. by a written report. In any event, it would fit within proposed Priority #3 above. I have asked Uton Robinson to let us know if s. 23 programs are for students with special education needs.

## 5. SEAC's proposal that TDSB Establish and Internal Right of Appeal for Students with Special Education Needs and Their Families, If Concerned About the Content or Implementation of their Individual Education Plan IEP

I wish to express in this report a serious concern about an important issue that SEAC has raised with TDSB, and on which there has, in my view, been insufficient action in response. I raised this to some extent during our last SEAC meeting. I elaborate on that here.

On June 13, 2016, after months of work together, SEAC passed four major motions calling for significant reforms in the TDSB's services for students with special education needs. Among other things, our Motion #2 (Ensuring that Parents, Guardians and Students Have a Fair and Effective Process for Raising Concerns about TDSB’s Accommodation of the Education Needs of Students with Special Education Needs) called for TDSB to establish a new internal appeal process for students with special education needs or their families, if concerned about the content of the student's IEP or with its implementation.

Motion #2's background included this:

"TDSB has a limited internal process for parents and guardians of students with special education needs, to raise concerns with the IEP’s contents or implementation. They can raise these concerns first with the teacher, and then with the principal, and after that with the relevant superintendent. SEAC anticipates that many if not most parents and guardians are not aware of that process.

Otherwise, aggrieved parents, guardians or students must resort to filing a human rights complaint with the Ontario Human Rights Tribunal. Filing a human rights complaint involves great legal expenses, delays and hardships to a family. A school board has access to public funds to hire lawyers in opposition to families who resort to a human rights complaint. The relationship between a family and a school board can be made more difficult by the costs, delays and human rights adversarial process.

TDSB in effect has 46,000 special education accommodation cases to assess and address each school year. In contrast, many large organizations in the public and private sector set up internal human rights and discrimination units. These are offered as a voluntary internal process for investigating and resolving workplace human rights complaints and concerns without the need to resort to the Human Rights Tribunal process. An employee can voluntarily opt for that process if they wish. They can always choose at any time to go to the Human Rights Tribunal, if they prefer.

It would help both families and TDSB for TDSB to create a fair internal appeal process for IEP and other education accommodation issues. Ontario special education regulations do not prevent TDSB from doing so. Such a process is especially important for a school board as large as TDSB.

The IEP development process is critically important to all students with special education needs. While only half of TDSB students with special education needs have had an Identification and Placement Review Committee (IPRC), all have an IEP. The 2016 final report of the Barbara Hall review of TDSB governance made findings that support the need for substantial improvement in this area. It concluded:

*“Parents expressed frustration at their inability to advocate for their children's special education needs in an effective way. They feel isolated, afraid and unsure of how to work with the school board administration to support their children's learning needs. They also said that the specific information they require to be informed about the options available to support students is not easily accessible on the website or from any other source.”*

These new procedures will better serve families and students. They would ultimately save TDSB money, while improving the delivery of education services to these students. TDSB may wish to first try a test period with such new processes. This would let TDSB get experience, and explore what works the best."

Our Motion #2's recommendations included this, among other things:

"4. If parents and guardians of students with special education needs, and where practicable, the student, disagree with any aspect of the proposed IEP, TDSB should make available an internal appeal process for hearing and deciding on the family’s concerns. This internal TDSB appeal process should meet the following requirements:

1. It should be very prompt. An IEP should be finalized as quickly as possible, so that the students’ learning needs are promptly met.
2. No proposed accommodations should be withheld from a student pending an appeal. The family should not feel pressured not to appeal, lest the child be placed in a position of educational disadvantage during the appeal process. In other words, a family should not fear that if they launch an appeal, the student will suffer because TDSB will not provide an accommodation or service TDSB has offered, during the time while the appeal is pending.
3. The appeal process should be fair. TDSB should let the family know all of its issues or concerns with a family’s proposal regarding the IEP. The family should be given a fair chance to express its concerns and recommendations regarding the IEP.
4. The appeal should be to a person or persons who are independent and impartial. They should have expertise in special education. They should not have taken part in any of the earlier discussions or decisions regarding the IEP for that child.
5. At the appeal, every effort should be made to mediate and resolve any disagreements between the family and TDSB. If the matter cannot be resolved by agreement, there should be an option for TDSB to appoint a person or persons who are outside TDSB to consider the appeal, along short time lines.
6. At the appeal, written reasons should be given for the decision, and especially if any of the family’s requests or concerns are not accepted.
7. If, after receiving the appeal reasons, the family wishes to present any new information, it can ask for the appeal to be reconsidered. This should be along short time lines.
8. After the appeal is decided, if the family is not satisfied, it should be able to bring its concerns regarding the proposed IEP to the Executive Superintendent for Special Education, for a further consideration.

5. TDSB should establish a process for parents and guardians of students with special education needs and where practicable, the student, where they can raise concerns about the implementation of the IEP. For example, this should be available if there is a concern that the IEP is not being fully implemented. These should follow the same procedures as listed above for family concerns regarding the content of the IEP."

At our October 2, 2017 SEAC meeting, SEAC member Paula Boutis asked TDSB Superintendent of Special Education Uton Robinson what TDSB was doing in response to our recommendation that an internal TDSB appeal process be established. Uton Robinson responded that for situations where there is a family concern regarding the IEP, TDSB is following the procedure that the Ministry of Education sets out for dealing with such situations. He said the TDSB will continue to follow the Ministry directive for these situations. That process allows for collaboration and opportunities to raise concerns. He said that if there is a mechanism that SEAC would like TDSB staff to consider, staff would be receptive to that. However, as it stands now, TDSB is continuing to follow the standards for the IEP process that the Ministry has identified.

At our October meeting, I indicated that I was quite troubled by that response. Our Motion #2 was quite clear. It made it clear that the current practice is inadequate. It made very specific recommendations for action. It also made it clear that the TDSB is not constrained to simply do that which the Ministry has mapped out in this area.

I indicated that the staff response suggests that a decision had been made to reject our recommendation. If the staff have not rejected it, we can discuss it further. If the staff have rejected it, it will be for SEAC to decide what to do next.

Uton Robinson responded at our October meeting that no decision has been made, and that if SEAC had a process (i.e. for an appeal) that SEAC would like to share, it would be considered. He said TDSB wants to ensure that the process is one that parents can positively engage in. He said the process the Ministry sets out has a number of checks and balances. If that is not being done, staff training may be required.

Later during our October SEAC meeting, I commented further. I described what I understood to be the TDSB's position (and also the Ministry's process), namely that if a student or family feels the IEP is inadequate, they can raise this with the teacher, and then if necessary, with the principal, and after that with the superintendent. As I understood the feedback from staff at that meeting, we were being told that if we want to propose something with more detail, SEAC could do that.

I referred to the fact that because the current system is inadequate to meet parents' needs, our Motion #2 Recommendation 4, set out above, has detailed specifics. It sets out details in paras. (a) through (h), as features the new internal appeal procedure should include.

I also noted that in the draft of the TDSB Integrated Equity Framework Action Plan (that TDSB staff shared with SEAC in the 2016 fall), was this passage referring to targeted activities for TDSB in 2016-2017:

"Develop and implement an effective process for parents and students to raise concerns regarding programming for students with special educational needs."

When I read that passage a year ago, I was excited. Even though it doesn't use the word "appeal, it appeared to show that TDSB, at the highest level, had recognized the need SEAC had identified, and was going to take action. As well, the message from responses to SEAC's online parents’ survey is that what TDSB is now doing is not good enough. It supported what SEAC has been requesting.

We have earlier been told that our various motions have been under study at TDSB. I believe it is important for TDSB staff to come back to SEAC and say that it has studied our proposal and either agrees with what we have recommended here, or that it has another option for action, or that it disagrees with what we have recommended. We need more than being told that SEAC is free to offer more detail. I asked TDSB staff to take this feedback back.

I fully respect that TDSB staff of course works for and reports to the TDSB trustees, and not to SEAC. However, SEAC's mandate is to give advice in the form of recommendations to TDSB. When we do so in such an important area, after so much time has passed, it is reasonable to want a fuller response to core issues than this. Before Paula Boutis asked her question of staff at last month's meeting, TDSB staff did not ask us over the past 14 or so months for more details regarding our proposal that a new internal appeal process be established.

This issue is so vital for all parents of students with special education needs. It has been recognized as an area of need both in the Integrated Equity Framework Action Plan and in the report of the Barbra Hall task force. Our recommendation parallels the position of the Ontario Human Rights Commission in its "Guidelines on Accessible Education", which I quote below.

The OHRC "Guidelines on Accessible Education", states:

"Dispute resolution

Education providers should provide an effective and transparent mechanism to resolve disputes that arise in the accommodation process. At the primary and secondary levels, students and their parents should have timely access to a mechanism that will hear and resolve issues related to the identification of a student's disability-related needs, placement, programs and services, and any other process issues that may arise. The mechanism should comprise or have access to qualified individuals representing a range of interests. At the post-secondary level, students should also have an avenue to address and resolve accommodation disputes in a timely fashion.

The purpose of a dispute resolution mechanism should be to identify problems and determine ways to solve them which would permit the student access to educational services with a minimum of delay. Educational institutions should facilitate this process and provide reasonable assistance to students, and where applicable, their parents/guardians. Dispute resolution procedures that are not timely or effective could amount to a failure of the duty to accommodate.

Where there is a dispute regarding a proposed accommodation, and an education provider alleges undue hardship, the education provider must demonstrate it. It is not the responsibility of a student seeking accommodation to prove that a proposed accommodation would not cause undue hardship."

I encourage staff to come back to us with a fuller response on this issue.