

Report to TDSB SEAC from the SEAC Chair David Lepofsky for the March 7, 2016 TDSB SEAC Meeting

February 23, 2016

1. Progress on SEAC's February 1, 2016 Motion on the Upcoming Year's Special Education Budget

As you will recall, we have learned of a possible \$3,000,000 cut to provincial Special Education funding to TDSB this year. For that reason, SEAC passed this motion at our February 1, 2016 meeting:

"The TDSB Special Education Advisory Committee recommends to the Toronto District School Board that:

1. In its budget for next year, the Toronto District School Board should not cut any positions of any staff who provide or directly supervise direct services to students with special needs, and
2. Before any cuts are contemplated to staff who provide or directly supervise direct service to students with special needs, the TDSB should first exhaust all other possible areas for budget reductions elsewhere within the TDSB, that address lower priority items than services to society's vulnerable and disadvantaged children and youth, including thinning its layers of administrative bureaucracy.
3. TDSB should publicly report on steps it has taken to avert or avoid the need to cut staff who provide or directly supervise services to students with special needs."

As your chair, I have been active since then, working together with our SEAC vice-chair trustee Alexander Brown, trying to ensure that our recommendation gets a full and fair hearing before the School Board, including all the elected trustees.

On February 11, 2016, I made a deputation before the TDSB Budget Committee in support of our motion. My five-minute deputation (that is the time limit we are given) was followed by twenty minutes of good questions from the trustees.

In my deputation, beyond addressing our recent funding motion, I alerted the TDSB Budget Committee that SEAC is doing a major review of special education at TDSB, and will be coming forward with recommendations over the next months. I also encouraged trustees to work with us on our upcoming "parents outreach" activities.

I am scheduled to make another deputation on this topic to the TDSB's Program and School Services Committee on Wednesday, February 24, 2016 around 4:30 or 5 pm. Because I am having oral surgery earlier that day, I am submitting my deputation as a recorded mp3 file. I will share that mp3 file with SEAC members, and will have it posted on our SEAC website. I appreciate the PSS Committee of the Board agreeing to let me present in this way. I would have preferred to present in person, but simply won't be up to it at that time. Again, I will be given five minutes to present.

This event is open to the public. SEAC members are welcome to attend to observe. However I fully understand that this comes at short notice, at a tough time of day, when you have family and other responsibilities. As well, you can easily hear the mp3 when I sent it to you, without needing to take so much time out of your busy day. I just want to be sure everyone knows they are welcome there.

I have put in a request to also be able to present to the entire TDSB Board at its March 9, 2016 meeting on this topic. We are entitled under Ontario regulations to be heard by the TDSB. I will advise if this request is accepted.

Meanwhile, it would be helpful if each SEAC member and related organizations could contact their

own trustees. Urge them to support the motion that we passed. Even a quick phone call or email to your trustee can really help.

It would be helpful if TDSB staff could report to us in writing in preparation for our March 7, 2016 SEAC meeting on what steps TDSB staff have taken to act on our motion, and whether they have avoided any cuts to TDSB staff who provide direct services to special education students, or to those who directly supervise them.

2. Next Steps in Our Work on SEAC “Priority 1”

Here is an update on what’s next regarding our “Priority 1” work at SEAC. SEAC set this as its first priority for our activity:

“How can TDSB improve its process for deciding what educational services and supports a child with special needs will receive?”

Leading up to our March 7, 2016 SEAC meeting, the Parents Outreach Working Group will be working on developing a survey for parents. That will be the focus of the Working Group’s February 29, 2016 conference call. If you have any suggestions of what we might include in that survey (aiming to keep the survey short of course), please email me before the Working Group meets on February 29, 2016.

At our February 1, 2016 SEAC meeting, SEAC passed a motion asking TDSB to provide SEAC with the online facilities to offer this survey to the public. We await word on TDSB’s decision on point. It would be helpful if TDSB staff could alert us in advance of our March 7, 2016 meeting via email of any internal progress on this request.

Here is a great opportunity for SEAC. At our March 7, 2016 we will allocate a good amount of time to hear from two leading organizations on what parents and families have told them regarding our Priority 1. These are both respected organizations where parents can turn for legal advice and representation if they feel a school board is not fulfilling its duty to accommodate a child’s disability. Both organizations have received a significant number of calls over the years on this topic regarding TDSB and other Ontario school boards.

We will hear from Robert Lattanzio, the executive director of the ARCH Disability Law Centre. ARCH is a legal clinic funded by Legal Aid Ontario that provides advice and legal representation on disability rights issues.

As well we will hear from Consuelo Rubio, who works at the Ontario Human Rights Legal Support Centre. This Government-funded legal clinic has existed since 2008. It is created by the Ontario Human Rights Code to provide legal advice and representation to people who want to file a human rights complaint with the Ontario Human Rights Tribunal. It receives thousands of calls on a wide range of human rights issues, including disability education issues.

I have asked ARCH’s Robert Lattanzio to include as part of his remarks, a brief overview of the legal route for parents who have concerns over issues of concern to us. He won’t be in a position to provide us with legal advice on specific cases. However, he will give us a general overview.

Each of these two excellent speakers will make brief introductory remarks. Then you will have a good chance to ask them questions. Please think about what you might want to ask.

These presentations will give us another perspective on the experiences families have when dealing with TDSB. Of course, that perspective reflects those who are facing sufficient difficulties that they resort to seeking legal advice and representation.

As well, on the topic of our Priority 1, I understand that senior TDSB officials including Executive Superintendent for Special Education, Uton Robinson, will be meeting on the evening of February 24, 2016 at 7 pm at the Board offices with a number of parents connected with the Toronto Family Network. That grassroots community organization advocates for children with special education

needs. Some SEAC members may be attending that meeting.

It would be helpful if a report on the concerns raised at that meeting could be shared with us in writing in advance, whether by Mr. Robinson or by any SEAC members who attend that meeting. We could post that written summary on the SEAC website. It can be very helpful in our work on Priority 1.

On Priority 1, before I became SEAC chair, I individually wrote Executive Superintendent Robinson on December 5, 2015, asking for TDSB records that would help us with our Priority work. Since our February 1, 2015 SEAC meeting, Mr. Robinson and I had a helpful meeting. I have made it clear that what we need are any written TDSB instructions to principals and other TDSB staff on how to deal with Priority 1 issues. TDSB reported to SEAC at our meeting last November that it is the school principal who has lead responsibility, for example, for explaining the system, including options for students with special education needs, to parents and families. We need whatever instructions and guidance TDSB gives the over 500 principals in the Board.

We will be given the TDSB handbooks for conducting In-School Team meetings, student Support Team meetings, Identification and Placement Review Committee meetings, and for developing Individual Education Plans. I have asked for these to be provided in an accessible MS Word format, not solely in pdf, since pdf presents accessibility problems. I have asked Uton Robinson for any other written instructions or guidance that supplements these documents and tells principals and teachers what they need to do re Priority 1 activities.

Finally, I want to bring your attention to an excellent resource available to SEAC on our Priority 1. In the early 2000s the Ontario Human Rights Commission conducted a very extensive investigation and consultation on challenges in Ontario facing students with disabilities, in the school system. This resulted in an excellent final report, issued in 2005, entitled: "The opportunity to succeed: Achieving barrier-free education for students with disabilities Consultation Report."

In an eight-page excerpt from that report, the Commission squarely addresses problems it then found, which relate to our Priority 1 activities. I set that excerpt out at the end of my report (Appendix A), and encourage all SEAC members to look at it.

3. SEAC Priority 3 – Making TDSB a Barrier-Free School System

The other major issue that will be on the agenda for our March 7, 2016 meeting will concern our Priority #3. This topic has come up, directly or indirectly, several times in our recent meetings. The third priority area that SEAC set for itself is as follows:

"PRIORITY 3 – What can be done to more effectively make TDSB education fully accessible, barrier-free and inclusive to children with special needs?"

We had agreed last year during the SEAC priority-setting that we did not need to finish one priority area before starting another. As such, TDSB has, as a first step, been invited to present at our March 7, 2016 meeting on what steps it is taking now to remove and prevent accessibility barriers across the Board.

The fewer barriers there are in the system, the easier it is for student with special education needs to take part in the mainstream, whether on a full-time or part-time basis. The more barriers there are in the school system, the harder and more costly it is to offer students with special education needs the option of learning in the mainstream.

At our March 7, 2016 meeting, I will give a five-minute briefing on the Accessibility for Ontarians with Disabilities Act. I led the campaign from 1994 to 2005 for this legislation, and lead the campaign to get it effectively implemented. If you want to learn more about it, visit the Accessibility for Ontarians with Disabilities Act Alliance website's "What's New" page:

<http://www.aodaalliance.org/strong-effective-aoda/default.asp>

Also, for background on this issue, there is an online captioned video lecture series I gave two years ago, on the history, goals and accomplishments of the AODA movement. If this might interest you, check out <http://www.aodaalliance.org/strong-effective-aoda/03272014.asp>

After my quick summary, TDSB will brief us on what they are doing. Mr. Chris Broadbent will be presenting. I have asked that we get a written report in advance from TDSB staff, which we can also post online, so that this presentation can be short and focused at our meeting. We will then have a chance for questions and discussion.

In discussing accessibility barriers, it is important to remember that this doesn't only address physical barriers, like steps to get into a school building. It concerns every kind of accessibility barrier, whether physical, attitudinal, technological, bureaucratic or administrative, etc.

It is great that at every SEAC meeting TDSB sends senior officials from the Special Education part of the Board. I am asking TDSB to regularly send to SEAC meetings some representation from its senior staff that is responsible for ensuring that TDSB becomes a barrier-free school board by 2025. Special education and barrier-free education should be wedded together. Both are central to SEAC's mandate. As the recent Barbara Hall report on TDSB wisely observed:

“We heard time and again that there is no long-term plan for special education, but merely a series of reactions to related problems and issues as they continue to arise. Some felt that the Special Education Advisory Committee could play a more active role in developing a long-term plan to support students.”

4. Conclusions

As always, I welcome your feedback, suggestions and ideas on our meetings, agendas and anything else regarding SEAC work. Also, remember that even between meetings, you can share issues and ideas with us all via email. Email provides us with a great chance to exchange ideas between meetings.

5. Correspondence Received by SEAC

1. Email dated February 3, 2016 from Renu Mandhane, Chief Commissioner, Ontario Human Rights Commission re Towards a Shared Vision of Ontario Human Rights
2. Email dated February 3, 2016 from Kristina Muscat, M.Sc, Account Manager - Sensory Specialist re: presenting to SEAC about the sensory products her company has to offer the TDSB.

Excerpt from *The Opportunity to Succeed: Achieving Barrier-free Education for Students with Disabilities*

Consultation Report
Ontario Human Rights Commission
2005

Accommodation Process

The principles of respect for dignity, individualization, and integration and full participation, as outlined in the Commission's *Disability Policy*, apply both to the substance of an accommodation and to the accommodation process. The manner in which an accommodation is provided and the methods by which it is implemented are subject to human rights standards.

The *Education Act* and its accompanying regulations set out a structure for the identification and accommodation of disability-related needs in the publicly funded school system. Under the *Education Act*, the Ministry of Education is responsible for requiring school boards to implement procedures for identifying student needs, and for setting standards for identification procedures.

Regulation 181/98, under the *Education Act*, requires all school boards to establish at least one Identification and Placement Review Committee ("IPRC"). An IPRC is composed of at least 3 people, one of whom must be a principal or supervisory officer of the board. The principal of a school may, by his or her own decision, or at the request of a parent, refer a student to an IPRC for a decision as to whether or not the student is "exceptional", and if so, whether he or she should be placed in a regular classroom with supports, or in a special education class.ⁱ In making these decisions, the IPRC must consider educational, health and psychological assessments, as well as information submitted by the parents.ⁱⁱ The IPRC can also interview the student. The IPRC has the power to make recommendations about special education programs and services for the student, but does not have decision-making power in this respect as the recommendations are not binding. In addition to assessing students who have not previously been identified as "exceptional," the IPRC assesses students who are transferring from a demonstration school to the regular school system, and reviews existing student identifications and placements.

Throughout the consultation, consultees expressed many concerns about the IPRC process. In particular, the Commission heard that the process lacks an effective dispute resolution mechanism. While Regulation 181/98 provides for an appeal of IPRC decisions dealing with determinations of "exceptionality" and student placement, it does not provide an avenue for parents to appeal the IPRC's recommendations regarding special education programs and services for their child. As a result, disputes between parents and educators about IPRC recommendations regarding programs and services are increasingly ending up at the Commission as human rights complaints.

Consultees told the Commission that the appeal process for decisions regarding identification and/or placement is cumbersome, time-consuming and overly litigious. Parents may appeal these types of decisions to the Special Education Appeal Board. However, these decisions are not binding on the school board, and if the school board chooses not to implement the Board's decision, the parent or pupil will have to appeal another level to the Special Education Tribunal. Several consultees indicated that the first level of appeal is a waste of valuable time since these decisions are not binding, and often end up being appealed to the Tribunal. Then, even if a parent gets a favourable decision from the Tribunal, more time may be spent in court if the school board applies to have the decision judicially reviewed.

Participants emphasized that every day lost in delays in the appeals process is a day that a child is not receiving the education they need. In some cases, the delay may even prevent the child from attending school at all. The Special Education Advisory Committee of the Huron-Superior Catholic District School Board recommended that "A body which provides direct access for parents to raise

their concerns and address issues in a timely fashion should be formed.” They observed that “The current IPRC appeal process is lengthy, expensive for School Boards and not user friendly. Parents find this process stressful, intimidating and often not objective or positive.”

If the IPRC decision is not appealed, the school principal is notified to prepare an IEP for the student.ⁱⁱⁱ As mentioned previously, an IEP is a written summary of a student’s strengths, interests and needs. It sets out the special education programs and services established to meet the student’s needs, and describes how these programs and services will be delivered. It is a working document that allows for modifications in response to the student’s growth and changing needs. In addition to serving as a guide for educators in monitoring the student’s progress, it is also meant to serve as an accountability tool for the student, his or her parents, and others working with the student. In developing the plan, the principal must take into consideration any recommendations made through the IPRC process.

Participants in the consultation described many problems in the development and implementation of IEPs. The Commission heard that, in many instances, local level school practices do not comply with the standards set in legislation and in the Ministry of Education’s special education policy statements.^{iv} In particular, consultees reported that, often, IEPs are not prepared in a timely fashion, that they are not an accurate reflection of a student’s disability-related needs, and that the supports described as necessary in the IEP are not provided. And, as Justice for Children and Youth noted, “Without a clear right of appeal...parents have little recourse when the IEP fails to come up with a plan which adequately addresses the needs of the disabled pupil.”

The Provincial Auditor’s 2001 Annual Report supports the observations of consultees. The Report states that, despite legislative and policy requirements, many IEPs are not completed in a timely manner,^v and many educators are not specifying in the IEP the services or supports that a student needs to meet his or her learning objectives, in part because “educators were concerned that they might not be able to provide a specified level of support” and might thus face legal action by parents.^{vi} The Report goes on to state that of the schools surveyed, “principals allocated the resources they were given based on their own judgment and that of their staff regarding the relative need of each student with special needs. They also noted that resource allocation was influenced by persistent advocacy by parents and not just by assessed needs.”^{vii} Of particular note, the Report observes that neither the Ministry of Education nor the school boards had established the quality-assurance processes necessary to ensure that all exceptional students have appropriate programs and services available to them.

The Commission was also very concerned to hear from consultees that the IEP is sometimes used inappropriately as a tool to generate funding. Specifically, the Commission heard that, in some cases, exaggerated characterizations of a student’s disability-related needs make their way into the student’s IEP, as a way to “bolster” the student’s ISA claim. The effects of this practice will be discussed further under “Appropriate Accommodation.”

Throughout the consultation, many parents described feeling intimidated by and excluded from participating in the accommodation process. Although Regulation 181/98 requires IPRCs to consider information from parents in making their decisions and gives parents the right to have a representative with them at the IPRC meeting, many parents continue to find the whole process alienating. For example, in its submission Community Living Toronto stated: “The entire IPRC process is extremely intimidating to parents... Parents of children with an intellectual disability must sit through ‘team meetings’ and IPRCs with up to 12 professionals who may never have met their child. The process is not explained fully. Parents may not understand the purpose of the meeting, the scope of the decisions that will be made, who will be in attendance and what their role in the meeting will be. Very seldom are translation services offered to families who have English as a second language. Parents often sign forms without understanding the far-reaching implications for the future.” Similarly, the Canadian Council of the Blind, Ontario Division stated: “Parents, generally, are not adequately informed of their rights, and often think that the educational professionals must know what’s best for their child.”

Regulation 181/98 also requires principals to consult with parents in the development of a student's IEP. However, the Commission heard reports from several participants that this is not always happening. Some parents expressed feeling pressured to sign the IEP, even though they were not certain that it was in their child's best interest. Some even went so far as to say that they feared that if they did not go along with the opinions of school staff, their child would suffer reprisals.

In its *1993 Annual Report*, the Office of the Provincial Auditor of Ontario recommended that "Each school board should advise parents annually of the existence of the parents' guide, and in particular point out the parents' right to refer their child to the IPRC through the principal. The parents' guide should include a description of the full range of options for their child, including options available at provincial and demonstration schools."^{viii} In its *2001 Annual Report*, the Provincial Auditor concluded that this recommendation had only been partially implemented. It stated: "Regulation 181/98 requires a board's parents' guide to be provided to families of exceptional students and available at all schools and at the Ministry's district offices. However, it does not require that [the guide] be provided to parents in advance of IPRC meetings and in many cases they were not at the schools we visited."^{ix}

As stated in the Commission's *Disability Policy*, "Accommodation is a shared responsibility. Everyone involved should co-operatively engage in the process, share information, and avail themselves of potential accommodation solutions."^x Since, in most cases, parents will have intimate familiarity with their own child's needs and abilities, parental involvement is invaluable in designing effective accommodation plans for students.

ACTIONS REQUIRED:

- (1) That the Ministry of Education review the IPRC process and make any changes necessary to ensure that it meets both the procedural and substantive components of the duty to accommodate as mandated by the *Code* and the Commission's *Disability Policy*.
- (2) That the Ministry of Education develop and implement an effective mechanism for resolving disputes that arise in the accommodation process.
- (3) That school boards and school personnel abide by human rights obligations when engaging in the accommodation process.
- (4) That the Ministry of Education provide to parents plain language guides on the accommodation process in multiple languages prior to the IPRC meeting.
- (5) That school boards arrange and conduct information seminars for parents on the accommodation process and aspects of the special education system more generally.

Appropriate Accommodation

The Commission's *Disability Policy* stipulates that an accommodation for a person with a disability will be considered appropriate if it respects the dignity of the individual with a disability, meets individual needs, best promotes integration and full participation, and ensures confidentiality. The Commission will consider an accommodation appropriate if it will "result in equal opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges enjoyed by others, or if it is proposed or adopted for the purpose of achieving equal opportunity, and meets the individual's disability-related needs."^{xi} Once appropriate accommodation is received, students must still be able to perform the essential requirements of the service, that is, they must still be able to pass the school curriculum.

Human rights law has clearly established that equality may sometimes require different treatment that does not offend an individual's dignity. In *Eaton v. Brant County Board of Education*, the Supreme

Court of Canada ruled on the appropriate placement for a student with a disability.^{xii} Emily Eaton, a 12-year old student with a disability, was initially placed in an integrated classroom. After three years, her teachers and assistants concluded that this placement was not in her best interests, and that she should be placed in a specialized classroom. Her parents disagreed. An IPRC determined that Emily Eaton should be placed in a specialized setting. Her parents appealed the decision up to the Supreme Court of Canada. The Court ruled that the decision of the tribunal to place Emily Eaton in a special education class, contrary to the wishes of her parents, did not violate the equality rights provisions of the *Charter*.

The Court stated that the failure to place Emily Eaton in an integrated setting did not create a burden or disadvantage for her, because such a placement was in her best interests. According to the Court, While integration should be recognized as the norm of general application because of the benefits it generally provides, a presumption in favour of integrated schooling would work to the disadvantage of pupils who require special education in order to achieve equality Integration can be either a benefit or a burden depending on whether the individual can profit from the advantages that integration provides.

The Court found that the tribunal had sought to determine the placement that would be in the best interests of Emily Eaton, had considered her special needs, and had striven to fashion a placement that would accommodate those needs and enable her to profit from the services that an educational program offers.

As the Commission noted in its *Disability Policy* “in some circumstances, the best way to ensure the dignity of persons with disabilities may be to provide separate or specialized services.”^{xiii} However, education providers must first make efforts to build or adapt educational services to accommodate students with disabilities in a way that promotes their integration and full participation. It is the Commission’s view that, before considering placing a student in a self-contained, or specialized classroom, education providers must first consider inclusion in the regular classroom. In most cases, appropriate accommodation will be accommodation in the regular classroom with supports. However, every student with a disability is unique. In order to provide appropriate accommodation to all students with disabilities, education providers must, with the assistance of parental input, assess each student’s particular strengths and needs, and consider these against a full range of placements, programs and services. Ultimately, appropriate accommodation will be decided on an individual basis.

The Ministry of Education has articulated its policy position on this issue stating its commitment to the principle that “the integration of exceptional students should be the normal practice in Ontario, when such a placement meets the pupil’s needs and is in accordance with parental wishes.”^{xiv}

Regulation 181/98 also requires an IPRC to consider the placement of a student with a disability in a regular class with appropriate special education services before it considers placing that student in a special education class.^{xv} If the IPRC decides that a student should be placed in a special education classroom, it must give written reasons for its decision.^{xvi}

For those students whose needs cannot be met entirely in the regular classroom, an IPRC may consider a range of possible options:

- **A regular class with indirect support.** The student is placed in a regular class for the entire day, and the teacher receives specialized consultative services.
- **A regular class with resource assistance.** The student is placed in the regular class for most or all of the day and receives specialized instruction, individually or in a small group, within the regular classroom from a qualified special education teacher.
- **A regular class with withdrawal assistance.** The student is placed in the regular class and receives instruction outside of the classroom for less than 50 per cent of the school day, from a qualified special education teacher.
- **A special education class with partial integration.** The student is placed by the IPRC in a

special education class with a regulated student-teacher ratio, for at least 50 per cent of the school day, but is integrated with a regular class for at least one instructional period daily.

- **A special education class full-time.** The student is placed by the IPRC in a special education class, where the student-teacher ratio conforms to Regulation 298, section 31, for the entire school day.^{xvii}

In some cases, there may be a need to apply for admission to a Provincial School for students who are blind, deaf, or deaf-blind, or, a Demonstration School for students who have severe learning disabilities. The Ministry of Education also maintains a number of hospital schools, as well as care and treatment centres at various locations in the province, and schools in a number of correctional facilities. The programs at these locations have an educational component, but they will also concentrate on broader aspects of a student's development.

Feedback received throughout the consultation indicates that consultees are sharply divided on the issue of appropriate accommodation. The widely divergent input received from consultees indicates that there is ongoing debate regarding decisions to place students in specialized settings as opposed to placing them in mainstream classrooms with supports.

Many, if not most, consultees expressed their preference that students with disabilities be included in regular classrooms. The Commission heard that inclusion in the regular classroom facilitates greater interaction between students of varying abilities, that it develops positive attitudes and relationships, and that it is less likely to stigmatize people with disabilities. For example, Community Living Ontario wrote: "If a child with a disability begins life with an expectation of inclusion, she is much more likely to seek out, and be accepted in, inclusive environments and activities later in life. It is equally true, that when a student that does not have a disability is educated in an inclusive environment, inclusion will most likely remain her cultural expectation throughout life."

Expressing her preference for inclusion, one parent wrote: "School is a training ground for life. Students learn academics and skills, but they also learn about people, all kinds of people, and how to relate to them. If students are 'different,' do we include them by having a place for them at the back of the school, perhaps with a separate lunch schedule? Have them arrive after school begins and depart before school officially ends? Have them enter and exit in their own separate door? Have them travel exclusively on their own segregated buses? How can other students gain understanding and acceptance if students with exceptionalities are treated in such a separate fashion?"

VOICE for Hearing Impaired Children, an organization committed to supporting deaf and hard of hearing children who communicate orally and who rely upon assistive listening devices to augment their ability to use residual hearing, also supports the inclusion of deaf students into the regular classroom.

The Commission heard, however, that placement in a regular classroom will not, in and of itself, result in inclusion in the educational and social components of student life. Consultees stressed that true inclusion requires that properly trained teachers and special education staff work together to adapt the classroom and school curriculum to meet the diverse needs of all students. Several participants expressed the view that true inclusion also depends in large part on adequate funding. For example, in its submission, the Dufferin Peel Educational Resource Workers' Association wrote: "Although the school board strives for maximum inclusion, the reality is poor physical facilities within schools, reduced funding for special programming, and depleted or non-existent professional development or specialized training opportunities for staff. Resources that have been reduced to the minimum cannot create an inclusive environment."

The Commission also heard that, despite a legislative and policy framework which officially supports inclusion, parents feel they have to fight to have their child placed in a mainstream classroom. Participants indicated that, in some cases, even an IPRC decision indicating that a student should be placed in a regular classroom with supports is not enough to secure that type of accommodation.

On the other side of the debate are those who stress the benefits of a specialized educational setting

outside the mainstream classroom. The Commission heard that in the regular classroom, opportunities for intense one-on-one instruction for students with disabilities are reduced, educators are less able to teach and reinforce crucial special skills, and that the quality of education for the class as a whole suffers as a result. For example, The Autism Society Ontario wrote "...segregated classes can offer the opportunity to complete high school or learn skills that are not taught in typical classrooms but will allow [students] to function more fully in the community as adults. If integration during the school years is not the best way to produce adults who can meaningfully participate in the community, then it is not in the best interest of the child."

Along the same lines, one parent described the experience of her son in a specialized setting as follows: "[My son was] IPRC'd directly into an age appropriate Language Learning Disability (LLD) class.... He was happy, learning like a sponge, and didn't feel badly that he 'talked funny', because everyone in the class also made mistakes when finding, or saying, the right words, in the right order. He felt just like everyone else, and was unselfconsciously plugging along, a bit at a time, but definitely learning to read and count." She went on to write: "I sincerely ask you NOT to discount the immense value of homogeneous groupings of children with similar disabilities...i.e. congregated or specialized classes. Some people who insist on integration/inclusion above all, call them 'segregated classes,' and chastise us, sometimes cruelly. Many of us vehemently disagree, having seen the value of 'congregating' our children with others who learn the same things, the same way, and thus allowing them to feel part of a group."

The Parents of Deaf-Plus Ontarians wrote: "It has been accepted for many years now in Ontario that Deaf citizens comprise a unique minority in their own language, rich culture and history. The recognized language of the Deaf is American Sign Language (ASL). Schools for the Deaf have played a huge role in fostering that language and culture, and all Deaf children should have the right to that education in their own language and culture."

Disputes about appropriate accommodation, particularly differences of opinion about what constitutes a child's best interest, are increasingly ending up at the Commission as human rights complaints. Some cases have stemmed from the IEP process, particularly where an IEP contains an exaggerated assessment of a student's disability-related needs in order to make that student eligible for greater levels of ISA funding. The IEP is meant to be an accurate gauge of the student's needs. When the IEP is used inappropriately in this way, it skews the official record of the student's disability-related needs, and in many cases it raises the expectations of parents and students about the accommodations the student will receive. The discrepancy between the content of the IEP and the actual accommodation received by students has been the basis for several human rights complaints at the OHRC. When IEPs are used for improper purposes, it can be very difficult to assess what the student's needs actually are, and whether the school board has provided that student with appropriate accommodation.

ACTIONS REQUIRED:

- 1) That the Ministry of Education ensure that educators are developing and implementing an accommodation plan for each student with a disability, in accordance with the *Code* and the Commission's *Disability Policy*, either through the IEP process, or otherwise.
- 2) That the Ministry of Education collect and analyze data on placements of students with disabilities, in accordance with the Commission's *Guidelines on Special Programs*. That this data be used only for the purposes of addressing inequities and promoting compliance with Commission policy and the *Code*. This data could include: numbers of students in mainstream classrooms versus self-contained classrooms, number of students in each placement according to type of disability, number of students who also belong to other historically disadvantaged groups, *etc.* That the Ministry report its findings to the public.

ⁱ In some cases, particularly where there is no dispute about a student's needs, school boards will not require the student to be formally identified through the IPRC process. Even without an IPRC assessment, a student has a right to equal treatment in educational services without discrimination on the basis of disability.

ⁱⁱ O. Reg. 181/98, *supra*, note 14, s.15.

ⁱⁱⁱ Regulation 181/98 requires principals to ensure that an IEP is developed for each student who has been identified as "exceptional" by an IPRC within 30 days of the student's placement in a special education program. For a student returning to a special education program, an IEP must be prepared within 30 days of the start of the school year.

^{iv} Legislative requirements for IEPs are set out in Reg. 181/98 under the *Education Act*. See also the Ministry of Education's policy document *Individual Education Plans: Standards for Development, Program Planning, and Implementation, 2000*.

^v The Report notes that of the IEPs reviewed, only 17% were completed within the required 30 day period. See Provincial Auditor's 2001 Annual Report, *supra*, note 1 at 129.

^{vi} *Ibid.*, at 128, 132.

^{vii} *Ibid.*, at 132.

^{viii} *Ibid.*, at 149.

^{ix} *Ibid.*, at 150.

^x *Disability Policy, supra*, note 5 at Part 3.4.

^{xi} *Ibid.*, at Part 3.3.

^{xii} *Eaton v. Brant County Board of Education*, [1997] 1 S.C.R. 241.

^{xiii} *Disability Policy, supra*, note 5 at Part 3.1.3.

^{xiv} See MEDU Memorandum dated June 9, 1994 to directors of education, superintendents of special education, and principals as quoted in Ministry of Education, *Special Education: A Guide for Educators*, 2001 at D10.

^{xv} O. Reg.181/98, *supra*, note 14, s. 17.

^{xvi} *Ibid.*, at ss. 18(2)(c).

^{xvii} Information taken from: <http://www.edu.gov.on.ca/eng/general/elemsec/speced/identifi.html>.