



Education Law eBulletin

A newsletter for educators

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The Special Education Tribunal and the Human Rights Tribunal: Competing Jurisdictions

As our readers know, the *Education Act* requires school boards to provide special education programs and services to students who are identified as “exceptional pupils.” Ontario Regulation 181/98 establishes the scheme through which the questions of identification and an appropriate placement for an exceptional pupil are determined. The Regulation also sets out the manner in which disputes between parents and school boards may be resolved. If a parent is dissatisfied with the decision of the Identification, Placement and Review Committee (IPRC) regarding the identification or placement of the student, the parent may appeal the IPRC decision to a Special Education Appeal Board (SEAB), which then makes recommendations to the school board. If the parent remains dissatisfied with the school board’s decision, the parent may appeal the identification and/or placement to the Special Education Tribunal (SET), which will then hold a trial-type hearing to decide those issues. The decision of the SET on the identification and placement is final and binding.

However, since many students with identified exceptionalities will also be considered to have a disability for the purposes of the *Human Rights Code*, sometimes school boards have faced multiple proceedings arising out of the same fact situation: an IPRC appeal to the Special Education Tribunal under the *Education Act* to determine appropriate placement, and a discrimination claim under the *Human Rights Code*, alleging that the school board failed to provide appropriate accommodation of the student’s disability.

This issue was explored by the Human Rights Tribunal of Ontario (HRTO) in its recent decision in *Sigrist and Carson v. London District Catholic School Board*, 210 HRTO 1062, released May 12, 2010, where the HRTO examined the question of whether the Special Education Tribunal has exclusive jurisdiction over the identification, placement and accommodation of students with special needs.

After receiving submissions from the parties on the jurisdictional issue, as well as from the Special Education Tribunal and the Ontario Human Rights Commission, Vice Chair Mark Hart of the HRTO observed (without actually deciding) that the Legislature intended to confer exclusive jurisdiction on the SET over disputes about the appropriate identification or placement of students with disabilities.

In coming to this conclusion, Vice Chair Hart noted that the Legislature had established a comprehensive scheme under the *Education Act* to deal with the identification and placement of students with special needs. The Vice Chair noted that the SET’s expertise in special education matters has been recognized by both the courts and the HRTO. In contrast, Vice Chair Hart observed that there is no requirement for members of the Human Rights Tribunal to have any particular specialized expertise in the areas of the appropriate identification or placement of exceptional pupils or the provision of special education programs and services to such students. The Vice Chair seriously doubted whether the Legislature, having established a comprehensive scheme under the *Education Act*, could have intended to allow parents to “effectively opt out of this legislative scheme and take a dispute of this nature to another adjudicative body [i.e., HRTO] which lacks the kind of specialized expertise possessed by the SET.”

In the Vice Chair’s view, “allowing parents to effectively opt out of the process under the *Education Act* may subvert both the comprehensive and specialized scheme established by the Legislature and the relationship between the parents, students and educators that the scheme is intended to foster.” Moreover, Vice Chair Hart found that conferring exclusive jurisdiction on the SET over disputes

about the identification and placement of exceptional pupils “would not only recognize the comprehensive, specialized and expert nature of the legislative scheme established under the *Education Act*, but also would avoid the duplication inherent in a concurrent jurisdiction model, the prospect of ‘forum shopping’ by parents, and the determination of these complex disputes by a less specialized tribunal which lacks the SET’s particular focus and expertise.”

However, in *Sigrist and Carson*, the parents and School Board had apparently come to an agreement about the formal placement of the students. The point was significant for Vice Chair Hart, as he noted that it appears from the SET’s own jurisprudence that in order for the SET to consider itself to have jurisdiction over a particular case, there must be a live dispute regarding the placement (or identification) of the student. In this regard, the Vice Chair cited the decision of the SET in *W.F. v. Ottawa Catholic School Board*, where the SET considered that it did not have jurisdiction where the essential dispute in the case was not about the placement of the decision itself but solely about programs and services within that placement. The Vice Chair therefore concluded that in the case before him:

...whether or not the SET has exclusive jurisdiction over issues relating to the identification and placement of students with disabilities, the fact that the SET’s own jurisprudence states that it does not have jurisdiction over programs and services where there is no dispute as to formal placement in my view means that in the specific circumstances of this case, I cannot conclude that the SET has exclusive jurisdiction (or indeed any jurisdiction) to address the issues raised on behalf of the complainants.

The clear implication from Vice Chair Hart’s reasoning in *Sigrist and Carson* is that where a parent commences a discrimination claim before the Human Rights Tribunal in respect of an issue that goes solely to the identification and placement of a student with disabilities, the school board will have a good argument, based on the Vice Chair’s comments, that Special Education Tribunal has exclusive jurisdiction over such issues. However, where placement is not in issue and the essential nature of the dispute involves special education programs and services, that argument will not be available. In other words, the thorny question of the distinction between “placement” and “program” that has long plagued the Special Education Tribunal has now crept into the jurisdictional jurisprudence of the Human Rights Tribunal. And on that note ...

Have a Wonderful and Safe Summer!



CASES

The Ontario Superior Court dismissed a motion by defendants to dismiss a claim against them, finding that the defendants were capable of being held personally liable for their conduct as it related to the plaintiff’s wrongful dismissal. *Stokes v. St. Clair College of Applied Arts and Technology*, [2010] O.J. No. 1544.

A doctoral student initiated a complaint after being refused funding; the Ontario Human Rights Tribunal removed personal respondents from the application that also claimed against the University for which they worked. *Hattori v. University of Ottawa*, [2010] O.H.R.T.D. No. 1063.