Ontario

The Ontario Special Education (English) Tribunal

INFORMATION FOR PARTIES

A guide for parties who appeal to the Ontario Special Education (English) Tribunal

This document provides information, help and guidance to people who appeal to the Ontario Special Education (English) Tribunal. It is presented in Information Sheets as follows:

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INFORMATION SHEET 1

APPEALING TO THE ONTARIO SPECIAL EDUCATION (ENGLISH) TRIBUNAL

NOTE: This *Information Sheet* has been developed to help parties who appeal to the Ontario Special Education (English) Tribunal. It is for information purposes only, does not contain legal advice and should not be relied on as legal advice.

INTRODUCTION

The Ontario Special Education (English) Tribunal ("Tribunal") hears appeals by parents who are not satisfied with the identification and/or placement decisions made by their child's school board ("board"). The Tribunal hears such appeals only when parents have already "exhausted all rights of appeal" under the *Education Act*. Parents must follow the process set out in this *Act* for appealing the identification and/or placement decisions of a board before appealing to the Tribunal.

QUESTIONS AND ANSWERS

Where can parents find information about a board's special education programs and procedures?

Every board is required to have a *Parent Guide to Special Education*. This *Guide* includes information on the procedures involved in identifying a student as exceptional and determining the student's placement. It also provides information on appealing the decision of the Identification Placement and Review Committee (IPRC), if the parents do not agree with the decision.

The *Guide* is available from the principal of the pupil's (the official term for a student under the *Education Act*) school.

What should parents do when they have a child with special learning needs and are concerned about the child's education?

Parents can write to the principal of their child's school and request that the principal arrange for an IPRC meeting. Parents should also read the board's *Parent Guide to Special Education*.

What must the principal do when he/she receives this written request?

The principal of the student's school:

- must refer the student to an IPRC, upon receiving a written request from the parents;
- may, with written notice to the parents, refer the student to an IPRC if the principal and the student's teacher(s) believe that the student may benefit from a special education program.

Within fifteen (15) days of receiving a written request, or giving the parents notice, the principal must provide the parents with:

- a copy of the board's *Parent Guide to Special Education*;
- an acknowledgement of the parents' request; and
- a written statement of approximately when the IPRC will meet.

What is an IPRC?

An IPRC is composed of at least three (3) persons, one (1) of whom must be a principal or supervisory officer of the board. *Regulation 181/98: Identification and Placement of Exceptional Pupils ("Regulation 181/98")* requires that all boards set up an IPRC.

What is the role of the IPRC?

The IPRC will:

- decide whether or not the student should be identified as exceptional;
- identify the areas of the student's exceptionality, according to the categories and definitions of exceptionalities provided by the Ministry of Education;
- decide an appropriate placement for the student; and
- review the identification and placement at least once each school year.

The IPRC may also discuss programming and services for the student if the parents request this. However, it will not make any decisions about these things.

May parents attend the IPRC meeting?

Regulation 181/98 entitles parents and students sixteen (16) years of age or older:

- to be present at and participate in all committee discussions about the student; and
- to be present when the committee's identification and placement decision is made.

What can parents do if they disagree with the IPRC decision?

If the parents do not agree with the identification and/or the placement decision made by the IPRC, they may:

- within fifteen (15) days of receipt of the decision, request that the IPRC hold a second meeting to discuss their concerns; or

- within thirty (30) days of receipt of the decision, file a notice of appeal with the secretary of the board.

If the parents do not agree with the decision made after the second meeting, they may file a notice of appeal within fifteen (15) days of receiving that decision.

If the parents do not consent to the IPRC decision and do not appeal it, the board will instruct the principal to implement the IPRC decision.

How do parents appeal an IPRC decision?

If the parents disagree with the IPRC's identification of the student as exceptional, with the category and definition of the exceptionality and/or with the placement decision of the IPRC, they may, within thirty (30) days of receiving the original decision or within fifteen (15) days of receiving the decision from the second IPRC meeting described above, inform the secretary of the board that they intend to appeal. This must be done in writing.

The notice of appeal must:

- indicate the IPRC decision with which the parents disagree; and
- include a statement that sets out their reasons for disagreeing.

Note: the secretary of the board is usually the director of education.

What if an IPRC has not been held?

If an IPRC meeting has not been held despite the parents' written request, the parents should contact:

- the principal;
- the superintendent;
- the district office of the Ministry of Education;
- a parent advocacy organization (see the Tribunal's *Information Sheet 2: Starting an Appeal*); and/or
- legal counsel.

If the parents contact the Tribunal, the Tribunal Secretary ("Secretary") will refer them to a district office of the Ministry of Education.

What happens next?

Within fifteen (15) days of receiving a letter requesting an appeal, the board must begin to make the arrangements for a Special Education Appeal Board (SEAB) hearing and let the parents know what to do next.

What is the role of the SEAB?

The SEAB will consider the IPRC decision and the parents' request. It will issue a recommendation, within three (3) days of the hearing, to either agree or disagree with the IPRC decision. The SEAB will make its recommendation to the board.

The board will consider the SEAB's recommendation and decide what action to take. The board will give a written decision.

If the parents are not satisfied with the board's decision regarding the SEAB's recommendation, they may appeal to the Tribunal within thirty (30) days of receiving the board's written decision.

When have parents "exhausted all rights of appeal" under the *Education Act* and can then appeal to the Tribunal?

Once the board has issued its written decision regarding the SEAB's recommendations, parents have exhausted all their rights of appeal under the *Education Act.* The parents may then begin an appeal to the Tribunal if they do not agree with the board's decision.

What authority does the Tribunal have to hear an appeal?

The Tribunal gets its authority/jurisdiction from Section 57 of the *Education Act* and *Regulation 181/98.* To hear an appeal, the Tribunal must be satisfied that:

- procedures and timelines set out in the regulation have been followed; and
- the parents are still dissatisfied with the board's decision about the identification and/or placement of the student.

What is the role of the Tribunal?

The Tribunal:

- hears appeals from parents, legal guardians or adult students concerning the identification and/or placement decision made by a board for a student who has special needs; and
- makes decisions in the best interest of the student**.**

Note: the phrase "best interest of the student" comes from the Supreme Court decision in *Eaton v. Brant County Board of Education,* (1997) 1 S.C.R. 241, which dealt with a decision of the Tribunal.

The Tribunal's decisions are:

- based on the facts and information presented at the hearing by the parties; and
- final and binding on the parties.

The Tribunal can:

- dismiss or grant the appeal; and
- make orders regarding the identification and/or placement of the student.

Can the Tribunal order a board to implement specific programs and services?

The Tribunal can make orders about the special education identification and/or placement of a student from the categories and options set out in the legislation:

- Identification: The five (5) categories and twelve (12) definitions of exceptionalities as listed in the *Special Education: A Guide for Educators.*
- Placement: The range of placement options in which exceptional students are provided with a special education program as listed in *Special Education: A Guide for Educators.*

In deciding the appropriate placement for a student, the Tribunal will consider the student's needs and the programs and services available in the placement. The Tribunal will determine whether a placement is appropriate for the student by considering if the programs and services within the specific placement are in the student's best interest.

The Tribunal cannot order a board to provide medical or therapeutic services such as Intensive Behaviour Intervention (IBI) for a student.

Who hears the appeal?

A panel of three (3) Tribunal members will hear the appeal. One (1) member will be the Panel Chair.

How is a Tribunal hearing different from IPRC and SEAB meetings?

A Tribunal hearing is more formal than IPRC and SEAB meetings. The Tribunal's procedures are set out in the *Statutory Powers Procedure Act* and the Tribunal's *Rules of Procedure*. The Tribunal follows a series of procedures that are set out in these *Rules of Procedure*, as well as principles of natural justice and procedural fairness, which include:

- parties to a hearing must be notified about the proceeding and about the case to which they have to respond;
- each party can ask questions and challenge the evidence of the other party;
- the panel hears all the relevant evidence that may be presented by the parties;
- the decision can only be made by those who hear the evidence presented by the parties; and
- the panel members must be unbiased and act in good faith: they cannot have a personal interest in the outcome.

Who is a party to an appeal?

Parents who apply to the Tribunal are referred to as a party to an appeal, or the appellants. The board is also referred to as a party to the appeal, or the respondent.

Is there a fee for filing an appeal to the Tribunal?

There is no fee for filing or hearing an appeal.

Are there are any other costs associated with the appeal?

There may be costs associated with an appeal. Parties are responsible for their own expenses in preparing for the appeal and attending the hearing. These expenses may include photocopying, representative or legal fees, and witness attendance fees.

Do parents require a lawyer?

Parents do not need to have a lawyer. They can represent themselves. For more detailed information about lawyers and representation see the Tribunal's *Information Sheet 2: Starting an Appeal.*

WHERE TO FIND MORE INFORMATION

More information is available from the following websites or by contacting the Secretary.

- *Education Act, Section 57* www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90e02_e.htm#BK76
- Ontario *Regulation 181/98: Identification and Placement of Exceptional Pupils* www.e-laws.gov.on.ca/html/regs/english/elaws_regs_980181_e.htm
- Ontario Special Education (English) Tribunal's *Rules of Procedure* www.oset-tedo.ca/eng/pdfs/rules.pdf
- *Special Education: A Guide for Educators* www.edu.gov.on.ca/eng/general/elemsec/speced/guide.html
- *Statutory Powers Procedure Act www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90s22_e.htm)*

ACRONYMS

IBI: Intensive Behaviour Intervention
IPRC: Identification, Placement and Review Committee
SEAB: Special Education Advisory Board

DEFINITIONS

Information about some of the terms in this Information Sheet can also be found at:

- Ontario Special Education (English) Tribunal's *Rules of Procedure* www.oset-tedo.ca/eng/pdfs/rules.pdf
- Practice Directions www.oset-tedo.ca/eng/directions.html

Exceptional pupil (student):
A student whose behavioural, communicational, intellectual, physical or multiple exceptionalities are such that he/she is considered to need placement in a special education program.

Identification:
The five (5) categories and twelve (12) definitions of exceptionalities as listed in the *Special Education: A Guide for Educators* www.edu.gov.on.ca/eng/general/elemsec/speced/guide.html.

Jurisdiction:
The legal authority of the Tribunal to hear a particular matter.

Placement:
The range of placement options in which exceptional students are provided with a special education program as listed in *Special Education: A Guide for Educators* www.edu.gov.on.ca/eng/general/elemsec/speced/guide.html.

Special education program:
An educational program based on and modified by the results of continuous assessment and evaluation. This program includes a plan containing specific objectives and an outline of educational services that meets the needs of the exceptional student.

Special education services:
The facilities and the resources, including support personnel and equipment, necessary for developing and implementing a special education program.

INFORMATION SHEET 2

STARTING AN APPEAL

NOTE: This *Information Sheet* has been developed to help the parties who appeal to the Ontario Special Education (English) Tribunal. It is for information purposes only, does not contain legal advice and should not be relied on as legal advice.

INTRODUCTION

There are a number of steps that must be followed to begin an appeal, including submitting a *Notice of Appeal* form, participating in a pre-hearing conference and gathering all the necessary documentation. These procedures are found in the Tribunal's *Rules of Procedure,* which provide for a fair, effective, speedy and accessible process, consistent with procedural fairness and the principles of natural justice. The *Rules of Procedure, Form A and Form B* are available on the Tribunal's website or the Tribunal Secretary (Secretary) will provide a copy upon request.

QUESTIONS AND ANSWERS

What is the first step?

To start an appeal to the Tribunal, parents must:

- complete *Form A: Notice of Appeal* and send it to the Secretary; or
- send a letter to the Secretary stating their intention to appeal the board's decision concerning the identification and/or placement of the pupil.

After receiving *Form A* from the Secretary, parents have twenty (20) calendar days to complete and return it.

What information must parents include in *Form A*?

Form A must include all the required information. If parents have questions about completing the form, they can call or email the Secretary. They can also get help from their representative or advocate, or from one of the provincial parent organizations that focus on the student's exceptionality.

The completed *Form A* must include:

- contact information for the parents;
- information about the student;
- a description of the steps that led to the appeal: IPRC, SEAB and the board's decision;

- copies of the documents related to these steps: IPRC decision, SEAB recommendations and board decision;
- a description of the grounds for the appeal;
- a description of what the parents want the Tribunal to order the board to do about the student's exceptionality identification and/or placement (remedy);
- information about the parents' representative, if the parents are going to be represented;
- information about whether the issues raised in the appeal are already under consideration by someone else, such as a court or the Human Rights Tribunal; and
- signatures.

How should parents describe why they are appealing to the Tribunal?

The grounds for the appeal on *Form A* must be stated clearly and concisely. Parent must state whether the identification and/or placement is being appealed. It is important to include reasons for the dissatisfaction with the board's decision.

What happens if *Form A* is incomplete?

If *Form A* is incomplete, it will be sent back to the parents. The Secretary will tell parents what is missing and what must be included to begin the appeal process.

What happens after parents send in *Form A*?

The Secretary will send the completed *Form A* and the required attachments to the board and to the Tribunal Chair. The board then has ten (10) days to complete *Form B: Response to a Notice of Appeal* and return it to the Secretary. The completed *Form B* and the required attachments are sent to the parents and to the Tribunal Chair.

What happens if *Form B* is incomplete?

It will be returned to the board. The Secretary will advise the board as to what is missing.

Are there time lines for an appeal?

The Tribunal's *Rules of Procedure* set time lines for the completion of certain steps in the appeal process. These time lines are summarized in the chart below:

Steps	Time Lines
Parents appeal to the Tribunal.	Within 30 calendar days of receiving the board's decision related to the SEAB recommendations.
Parents complete *Form A: Notice of Appeal* and send it to the Tribunal.	Within 20 calendar days of receiving *Form A* from the Secretary.
Board files completed *Form B: Response to Notice of Appeal.*	Within 10 calendar days of receiving the completed *Form A* from the Secretary.
Pre-hearing conference is organized with the parties and the panel.	Within 20 calendar days after the Secretary receives the completed *Form B* from the board.

Parties disclose their document binder and their list of witnesses to the Tribunal and to each other.	Parents: normally 30 calendar days before hearing date. Board: normally 15 calendar days before hearing date.
The Tribunal's decision is sent to the parties.	Within 90 calendar days of the completion of the hearing.

Do parties need a representative when they appeal to the Tribunal?

No. The Tribunal does not require or expect that parties will be represented at a hearing. Parties may be self-represented or they may rely on someone to help them to prepare for and participate in an appeal to the Tribunal.

The Tribunal does not arrange or pay for representation for parties, nor can it order one party to pay for representation for the other party.

Who is a representative?

A representative is:

- a lawyer or a paralegal who is licensed by the Law Society of Upper Canada; or
- a person without a licence who is permitted by legislation to provide legal advice or services.

Who is a support person?

A support person is a family member, a friend, an employee or volunteer from an organization, such as the parent organizations for the various exceptionalities, who attends the hearing with a party to provide support and assistance. A support person may not provide legal advice or present the party's case to the panel.

What is the difference between a representative and a support person?

A representative:

- is licensed by the Law Society to provide legal services;
- can be a person who is permitted by the Law Society to provide legal services without a licence;
- may be an unpaid family member, an unpaid friend or neighbour who provides legal services no more than three times a year; or
- can be a student, a volunteer or an employee of a legal aid clinic.

A support person;

- cannot provide legal services or advice; and
- attends the hearing to provide moral support and assistance to the parents.

What does a representative do?

The representative is responsible for:

- communicating with the Tribunal and the other party;
- acting on their client's instructions; and
- preparing and presenting their client's case to the Tribunal, as directed by their client.

Where a party is represented, the Tribunal will communicate with the party through the representative.

Can the Tribunal exclude a representative from a hearing?

The *Statutory Powers Procedure Act,* section 23 (1), permits the Tribunal to make orders to prevent an abuse of its processes. The Tribunal may remove any representative from a hearing who is in a conflict of interest. The Tribunal may exclude an unlicensed representative from a hearing if the Tribunal finds that the representative:

- is not competent to properly represent or advise the party; or
- does not appear to understand and comply at the hearing with the duties and responsibilities of a representative in the Tribunal's *Rules of Procedure* and in the Tribunal's *Information Sheets*.

How do parents find a representative?

Parents often find a representative through a referral from other parents or from a non-profit advocacy organization. The Tribunal does not endorse any legal assistance or information organization or agency. Parents may wish to contact one of the following organizations for legal information:

- The Child Advocacy Project (CAP) of Pro Bono Law Ontario
  416-977-4448
  Ontario Toll Free: 1-866-466-7256
  www.childadvocacy.ca or http://www.pblo.org/
- Justice for Children and Youth
  416-920-1633
  Ontario Toll Free: 1-866-999-5329
  www.jfcy.org
- Lawyer Referral Service
  The Lawyer Referral Service of the Law Society of Upper Canada
  416-947-3330 or 1-800-268-8326
  www.lsuc.on.ca
- Legal Aid Ontario
  416-979-1446
  Ontario Toll Free: 1-800-668-8258
  www.legalaid.on.ca

There are many non-profit advocacy organizations that provide advice and guidance to parents on various issues related to the special needs of their children. Representatives of some of these organizations may be appointed to boards' Special Education Advisory Committees

(SEAC). The Ministry of Education lists some of these organizations on its website. Please note that neither the Tribunal nor the Ministry of Education endorse any services or products offered by any of these organizations. The list below is merely intended to make parents aware of the organizations' existence and website information:

- Association for Bright Children: www.abcontario.ca
- Autism Ontario: www.autismontario.com
- Canadian Association of Community Living: www.cacl.ca/english/index.asp
- Canadian Hearing Society (CHS): www.chs.ca
- Canadian National Institute for the Blind (CNIB): www.cnib.ca
- Integration Action for Inclusion in Education and Community: www.integration-inclusion.com
- Easter Seals Ontario: http://easterseals.org
- Learning Disabilities Association of Ontario (LDAO): www.ldao.ca
- Ontario Association for Families of Children with Communication Disorders (OAFCCD): www.oafccd.com
- Ontario Association for the Deaf: www.deafontario.ca
- Ontario Association for Community Living: www.communitylivingontario.ca
- Ontario Coalition for Inclusive Education: www.inclusive-education.ca
- Ontario Federation for Cerebral Palsy: www.ofcp.ca
- Parents for Children's Mental Health: www.pcmh.ca
- Spina Bifida and Hydrocephalus Association of Ontario: www.sbhao.on.ca
- Tourette Syndrome Association of Ontario: www.tourettesyndromeontario.ca
- VOICE for Hearing Impaired Children: www.voicefordeafkids.com

What does a party do if information changes about their representative?

If parties realize that they left out some information on their *Form A* or *Form B*, or if some of the information has changed, they should notify the Secretary as soon as possible. The Secretary will notify the hearing panel members and the other party.

Will the Secretary provide legal advice to parties?

The Secretary will not provide legal advice.

WHERE TO FIND MORE INFORMATION

More information is available from the following websites or by contacting the Secretary:

- *Form A: Notice of Appeal* www.oset-tedo.ca/eng/pdfs/FormA09.pdf
- *Form B: Response to a Notice of Appeal* www.oset-tedo.ca/eng/pdfs/FormB09.pdf
- *Law Society Act* *www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90l08_e.htm*
- Ontario Special Education (English) Tribunal's *Rules of Procedure* www.oset-tedo.ca/eng/pdfs/rules.pdf

- *Practice Direction - Representation Before the Tribunal*: www.oset-tedo.ca/eng/pdfs/Representation09.pdf

- *Statutory Powers Procedure Act www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90s22_e.htm)*

ACRONYMS

IPRC: Identification, Placement and Review Committee
SEAB: Special Education Advisory Board
SEAC: Special Education Advisory Committee

DEFINITIONS

Information about some of the terms in this Information Sheet can also be found at:

- Ontario Special Education (English) Tribunal's *Rules of Procedure* www.oset-tedo.ca/eng/pdfs/rules.pdf

- Practice Directions www.oset-tedo.ca/eng/directions.html

Support person:
A person who accompanies and helps a party at a hearing but who does not provide legal services or legal advice.

Remedy:
The decision that the parents want the Tribunal to make regarding the identification and/or placement of the student and the special education services for that student.

Representative:
A licensed lawyer, a paralegal or an unlicensed individual who is permitted by the Law Society of Upper Canada to provide legal advice or legal services.

Self represented:
A party who does not have assistance from a representative and is representing him/herself.

INFORMATION SHEET 3a

PREPARING FOR THE HEARING – PRE-HEARING CONFERENCE

NOTE: This *Information Sheet* has been developed to help the parties who appeal to the Ontario Special Education (English) Tribunal. It is for information purposes only, does not contain legal advice and should not be relied on as legal advice.

INTRODUCTION

Once *Form A* and *Form B* are received by the Tribunal Secretary (Secretary), the Tribunal panel assigned to this appeal will have a discussion with the parties about the next steps. This discussion is called a pre-hearing conference.

QUESTIONS AND ANSWERS

Why is there a pre-hearing conference?

The purpose of this conference is to:

- discuss what procedures will be followed through the appeal process;
- clarify the issues and the possible solution (remedy);
- identify the preliminary issues;
- set dates for hearing the preliminary issues and dates for the appeal;
- set dates for sharing information with the Tribunal and the other party (disclosure);
- identify the accommodation needs of the parties and/or participants; and
- invite the parties to consider mediation with a Tribunal member trained in mediation. Note: mediation is used only if both parties agree.

Is the pre-hearing conference a face-to-face meeting?

The pre-hearing conference is usually held by teleconference. However, it can be a face-to-face meeting, or the information can be shared in writing.

Who participates in the pre-hearing conference?

The participants are the parties and their representative(s), the three members of the panel and the Secretary.

What if a party needs accommodation at the pre-hearing conference and/or at the hearing?

Requests for accommodation (e.g., wheelchair access, sign language interpreter, large print materials or other help) are made to the Secretary. It is important to make any accommodation requests as early as possible to ensure that reasonable accommodation can be provided prior to the start of the pre-hearing and/or the hearing.

What if an issue requires a decision from the Tribunal before the hearing?

Either party can notify the Secretary of an issue. The Panel Chair will determine the most appropriate way to resolve the issue, which may include requiring the party with the issue to bring a motion before the Tribunal. The motion may be heard by teleconference or in person prior to the hearing or at the hearing.

If the issue is raised after the initial conference, the Secretary will arrange for another conference with the parties and the panel to decide how to resolve the issue. If a motion is required, the Panel Chair will set dates for:

- exchange of materials on the motion; and
- hearing of the motion.

What if a party has an issue during the hearing?

The party who wants to bring forward a motion must notify the Secretary. The process for handling the motion may be discussed during the hearing. The panel may make a decision on the motion right away or may defer it until the end of the hearing. The process for dealing with motions is set out in the Tribunal's *Rules of Procedure*.

WHERE TO FIND MORE INFORMATION

More information is available from the following websites or by contacting the Secretary.

- *Mediation Practice Directions* www.oset-tedo.ca/eng/pdfs/mediation09.pdf
- Ontario Special Education (English) Tribunal's *Rules of Procedure* www.oset-tedo.ca/eng/pdfs/rules.pdf

DEFINITIONS

Information about some of the terms in this Information Sheet can also be found at:

- Ontario Special Education (English) Tribunal's *Rules of Procedure* www.oset-tedo.ca/eng/pdfs/rules.pdf

- Practice Directions www.oset-tedo.ca/eng/directions.html

Accommodation:
Accommodation refers to the prevention and removal of barriers that may prevent people from participating fully in the hearing process, including the parties in an appeal, their representatives and witnesses. Examples of accommodation include providing wheelchair access, sign language interpretation or large print. Parties to an appeal should request accommodation at the initial teleconference.

Issue:
A matter in a dispute between two parties.

Motion:
An application made to the Tribunal for an order or ruling.

Remedy:
The decision that the parents want the Tribunal to make regarding the identification and/or placement of the student and the special education services for that student.

INFORMATION SHEET 3b

PLANNING FOR THE HEARING – DISCLOSURE AND EVIDENCE

NOTE: This *Information Sheet* has been developed to help the parties who appeal to the Ontario Special Education (English) Tribunal. It is for information purposes only, does not contain legal advice and should not be relied on as legal advice.

INTRODUCTION

All information related to the appeal must be shared with the other party and the Tribunal prior to the hearing. Parties must also determine what documents and information will be presented at the hearing. This process is called disclosure. The panel will determine if the documents and information will be considered evidence.

QUESTIONS AND ANSWERS

What is disclosure?

Disclosure is the sharing of all the information, including:

- the document binder that each party prepares;
- a list of witnesses to be called by the party and a brief summary of the evidence that the witness is expected to provide; and
- the name or names of expert witnesses the party will call at the hearing.

Disclosure is part of the policy of openness and fairness followed by the Tribunal. All documents that the parties will be using to support their arguments must be given to the other party and to the Tribunal in advance of the hearing.

How should the parties begin preparing for disclosure?

Parties should read the Tribunal's *Information Sheets* carefully and review the Tribunal's *Rules of Procedure*. As they begin compiling their case, parties may also find it useful to read previous Tribunal decisions that concern situations or circumstances similar to their own.

Parties must gather documents to support their position. These will be submitted to the Tribunal and the other party. The documents are put in an order that is going to be easy for both parties and the hearing panel to find during the hearing.

The Tribunal requests that both parties place all the documents in a document binder ("binder") and organize it using:

- table of contents;
- numbered tab dividers; and
- page numbering.

The documents included in the binder could include:

- assessment information;
- report cards;
- Individual Education Plans;
- relevant letters and reports; and
- any additional information relevant to the identification and placement.

It is expected that there will be some duplication in the contents of the two binders.

What is the disclosure process?

Parties make seven (7) copies of all documents including the list of witnesses and a summary of the evidence each witness will give. Each party will distribute the documents as follows:

- send four (4) copies to the Tribunal Secretary (Secretary) (one for each panel member and one for Secretary);
- send one (1) copy to the other party; and
- bring two (2) copies to the hearing: one (1) for the witnesses and one (1) for the court reporter.

When are documents disclosed?

This is discussed and decided at the pre-hearing conference. The Panel Chair, together with the parties, will identify the dates for disclosure. The pre-hearing conference report will record these dates and any other decisions made. Both parties will receive a copy of this report.

The parents will disclose their information or documents first. At least thirty (30) calendar days before the hearing, the parents will send the binder to the board representative and to the Tribunal.

At least fifteen (15) calendar days before the hearing, the board will send its binder to the parents and to the Tribunal.

How do information and documents become evidence?

Information and documents are not evidence until they are accepted and numbered as exhibits, at the hearing. If a document is relevant and both parties agree, the panel may identify it as an exhibit. If there is a dispute about a document, the party who wants to have it considered by the panel must have a witness testify to the information that is found in the document. The panel will then decide whether the document will be accepted as an exhibit.

What verbal and written evidence is presented to the panel?

Each party will present evidence that:

- is relevant;
- is current; and
- will help the panel in understanding the strengths and needs of the student. This may include:
    - educational, psychological, and health assessment reports, as described in *Regulation 181/98;*
    - other information about the student's education, such as report cards and samples of work; and
    - information about the programs and services they believe will meet the student's needs.

The panel may admit any evidence, including hearsay evidence. Hearsay is evidence, which came to the witness second-hand. That means that the witness did not make the statement and the statement was not made directly to the witness. The panel will determine what importance it will give to all the evidence.

As well as verbal and written evidence, the parties should also present information about the placement, special education programs and services that are most likely to meet the student's needs.

WHERE TO FIND MORE INFORMATION

More information is available from the following websites or by contacting the Secretary.

- Ontario *Regulation 181/98: Identification and Placement of Exceptional Pupils* www.e-laws.gov.on.ca/html/regs/english/elaws_regs_980181_e.htm

- Ontario Special Education (English) Tribunal's *Rules of Procedure* www.oset-tedo.ca/eng/pdfs/rules.pdf

- Previous Tribunal Decisions www.oset-tedo.ca/eng/decisions.html

DEFINITIONS

Information about some of the terms in this Information Sheet can also be found at:

- Ontario Special Education (English) Tribunal's *Rules of Procedure* www.oset-tedo.ca/eng/pdfs/rules.pdf

- Practice Directions www.oset-tedo.ca/eng/directions.html

Evidence:
Information and documents presented by the parties to the panel, including the information provided during a hearing by a witness who has promised to tell the truth.

Hearsay:
Evidence of which the witness does not have direct knowledge or testimony based on things that other people have said to the witness.

Special education program:
An educational program based on and modified by the results of continuous assessment and evaluation. This program includes a plan containing specific objectives and an outline of educational services that meets the needs of the exceptional student.
.
Special education services:
The facilities and the resources, including support personnel and equipment, necessary for developing and implementing a special education program.

INFORMATION SHEET 3c

PLANNING FOR THE HEARING - WITNESSES

NOTE: This *Information Sheet* has been developed to help the parties who appeal to the Ontario Special Education (English) Tribunal. It is for information purposes only, does not contain legal advice and should not be relied on as legal advice.

INTRODUCTION

A person who can give firsthand account of something seen, heard or experienced is called a witness. The information that a witness gives is called evidence. A witness may be called by either party to provide information related to the appeal. Parties must identify their witnesses before the hearing begins.

QUESTIONS AND ANSWERS

How do the parties determine who their witnesses should be?

Parties call witnesses who have relevant information to present. There is no need to call witnesses to confirm matters that are undisputed facts or to repeat information that has already been provided. If the student's identification as an exceptional student is in question, the parents may find it useful to have an expert witness give information about the student's assessment.

Each party should review the other party's witness list to ensure that the same witness is not being called by both parties.

Does the witness have to make a solemn promise to tell the truth before testifying?

Yes, the panel chair requires the witness to promise to tell the truth before testifying. They will also be asked whether they understand that failure to tell the truth is an offence under Ontario law.

How do the parties ensure that their witnesses attend the hearing?

Parties must ensure that each of their witnesses is prepared to attend the hearing. If the witness is willing to attend, the party calling the witness must ensure that the witness knows the time, date and location of the hearing. Under these circumstances there is no need to issue an official request to appear before the Tribunal.

If the person is unwilling to attend or requires an official request to attend because of his/her employment or for some other reason, the parties can complete the Tribunal's *Request for Summons* form. This form is available from the Tribunal Secretary (Secretary) or can be downloaded from the Tribunal website.

The Panel Chair will review the completed form. If the Panel Chair approves, the party must complete the *Summons* (also available from the Secretary and the Tribunal website) and serve (personally deliver it to) the witness. Please refer to the Tribunal's *Practice Direction for Issuing a Summons to a Witness*.

A *Summons* requires a person to attend a hearing as a witness and can require the witness to bring certain documents. The person being summoned is entitled to receive an attendance fee and a travel allowance. The party summoning the witness is responsible for paying these costs.

Can a party call an expert witness?

Either party can call an expert witness to give a professional opinion on some aspect of the issues under appeal. An expert witness is an individual called to testify at a hearing who is trained or has technical expertise in a particular field of knowledge, and can offer an expert opinion regarding a particular subject.

When parties call expert witnesses they must:

- ensure that the witness's report, a summary of his/her evidence, and the witness's resume or summary of qualifications, are provided to the panel and the other party before the hearing;
- indicate the witness's specific recognized area of expertise; and
- ask questions that are within the witness's area of expertise.

The other party may agree or object to accepting the witness as an expert. The panel will decide whether to accept the witness as an expert.

How many witnesses can be called in a day?

The number of witnesses called in a day depends on the anticipated length of each witness's testimony. Each party determines the number of witnesses it calls in any given day.

The parties should ensure that a sufficient number of witnesses are available so that there are no gaps leading to unnecessary adjournments in the proceeding. In estimating the time required for each witness, allowance should be made for cross-examination and re-examination.

What are the steps followed for each witness at the hearing?

The steps followed for each witness are:

- The Panel Chair requires the witness to promise to tell the truth.
- The witness is questioned by the party that called him/her.
- The other party cross-examines the witness.
- The witness is re-examined by the party who called him/her on any new matters that arose during cross-examination.
- The panel may question the witness.

What if one party objects to a question asked or statement made by the other party?

A party who is concerned about the fairness, correctness or relevance of a question asked or statement made by the other party can raise this concern as an objection with the panel. The Panel Chair will rule on the objection.

The panel has the authority to and will use much more flexibility in the questioning of witnesses than is permitted in a court of law. All rulings are final and not subject to further discussion at the hearing.

What must the parties consider when they are preparing to ask questions of a witness?

There are several considerations:

- The parties call the witnesses in an order that supports a logical presentation of the information to the panel.
- If a witness is unavailable at the time when his/her testimony fits into the logical sequence, he/she will be heard at a time that works for all concerned. The panel tries to help both parties by allowing as much flexibility as possible.
- When questioning a witness, it is important to use open-ended questions, rather than suggesting what the answer might be (leading the witness).
- If both parents are present, one of them may act as a representative and ask questions, while the other parent is sworn in as a witness and may be cross-examined on the evidence presented.
- When questioning a witness called to testify by the other party (cross-examination), the witness may be asked leading questions or questions designed to elicit a 'yes' or 'no' answer.
- During re-direct of a witness, questions must be related to new matters that arose during cross-examination. It is not an opportunity to go back to issues covered in the initial questioning.
- At the end of the board's case, the parents can provide evidence in reply to any new matter that has been raised by the board.
- Following questions from the panel, either party may ask re-direct questions. These questions are restricted to information given in response to the panel's question.
- If the parties are unclear about any part of this process, they are encouraged to ask questions.

WHERE TO FIND MORE INFORMATION

More information is available from the following websites or by contacting the Secretary.

- Ontario Special Education (English) Tribunal's *Rules of Procedure* www.oset-tedo.ca/eng/pdfs/rules.pdf

- *Practice Direction for Issuing a Summons to a Witness* www.oset-tedo.ca/eng/pdfs/summonsPolicy09.pdf

- Previous Tribunal Decisions www.oset-tedo.ca/eng/decisions.html

- *Student as a Witness* www.oset-tedo.ca/eng/pdfs/summonsStudents09.pdf

DEFINITIONS

Information about some of the terms in this Information Sheet can also be found at:

- Ontario Special Education (English) Tribunal's *Rules of Procedure* www.oset-tedo.ca/eng/pdfs/rules.pdf

- Practice Directions www.oset-tedo.ca/eng/directions.html

Evidence:
Information and documents presented by the parties to the panel, including the information provided during a hearing by a witness who has promised to tell the truth.

Expert Witness:
An individual called to testify at a hearing who is trained or has technical expertise in a particular field of knowledge, and can offer an "expert" opinion regarding a particular subject.

INFORMATION SHEET 3d

PLANNING FOR THE HEARING – ROLE OF THE STUDENT

NOTE: This *Information Sheet* has been developed to help the parties who appeal to the Ontario Special Education (English) Tribunal. It is for information purposes only, does not contain legal advice and should not be relied on as legal advice.

INTRODUCTION

Parties may wish to call the student to testify, or parents may want the student to attend the hearing as an observer and/or to meet the panel members.

QUESTIONS AND ANSWERS

Can a student attend the hearing?

Students generally do not attend Tribunal hearings. However, it may be appropriate for the student to attend the hearing if the parent or the board requests this. Prior to the start of the hearing, the parties should discuss with the Panel Chair:

- whether the student will be present for any part of or the whole of the hearing;
- the purpose of the student's presence; and
- how the student will participate.

If the parents wish the panel to meet the student, they must notify the Panel Chair prior to the hearing.

What should parents consider when deciding whether to bring the student to the hearing?

Before deciding whether to bring the student to the hearing, parents should first determine the purpose of having the student attend. These reasons could include:

- to observe the hearing;
- to enable the panel to meet the student; and/or
- to serve as a witness and give evidence.

Hearings can be long and complicated, and may be stressful. Age and attention span are factors that should influence the parents' decision to bring the student to observe a hearing.

Parents may want the student to give evidence. If the student is called as a witness by the parents, the student will be sworn in as a witness and may be questioned by the board or its representative as well as the panel. The student may express an opinion as to which placement and what special education services and programs he or she would prefer.

What should the board consider when determining whether to involve the student in the hearing?

Before deciding whether to involve the student in the hearing, the board should first communicate to the parents and the Panel Chair the reason for involving the student in the hearing.

Can a student decide to be a witness without parental approval?

A student who is sixteen (16) years or older is entitled to decide whether to appear as a witness without parental approval.

How should the parents prepare the student for attending a hearing?

It is important that the parents talk to the student about the hearing, including:

- why the hearing is being held;
- what the Tribunal is doing and why;
- what kind of behaviour is expected at a hearing;
- how much time it might take;
- who will be at the hearing;
- where will the parent sit;
- where will the student and the support person (if any) sit; and
- where will the student sit to testify.

Parents should consider bringing another adult to the hearing to support the student during the proceeding. This decision depends on the student's age and capacity to sit through a long day. It may be particularly helpful to have a support person if the student is called as a witness. The support person cannot be the parent who presents the case to the Tribunal or is engaged in instructing a representative.

What are some additional suggestions regarding the participation of the student?

Consider providing an opportunity for the student to visit the hearing room before the hearing date. If the parents plan to do this, they should contact the Tribunal Secretary (Secretary) who will assist in this process. If the student requires any accommodations at the hearing, parents are to inform the Secretary so that appropriate arrangements can be made in advance.

Parents should discuss with the student what it means to give a solemn promise to tell the truth the importance of always telling the truth when answering questions.

If the board is asking that the student attend the hearing, the arrangements for this should still be made in co-operation with the parents.

How can a student prepare to be a witness?

Parents should provide the student with advice on how to be a witness, including encouraging him or her to do the following:

- speak loudly so everyone can hear;
- hold your head up, so people can hear you and can see you;
- speak directly to the panel;
- remain as focused and calm as possible;
- tell the Panel Chair if you need something;
- always tell the truth;
- do not be afraid to say 'I am not sure' or 'I do not know', if you are asked a question to which you don't know or are not sure about the answer;
- if you do not understand the question that you are asked, say so; and
- be yourself.

WHERE TO FIND MORE INFORMATION

More information is available from the following websites or by contacting the Secretary.

- Ontario Special Education (English) Tribunal's *Rules of Procedure* www.oset-tedo.ca/eng/pdfs/rules.pdf

- Previous Tribunal Decisions www.oset-tedo.ca/eng/decisions.html

- *Student as a Witness* www.oset-tedo.ca/eng/pdfs/summonsStudents09.pdf

DEFINITIONS

Information about some of the terms in this Information Sheet can also be found at:

- Ontario Special Education (English) Tribunal's *Rules of Procedure* www.oset-tedo.ca/eng/pdfs/rules.pdf

- Practice Directions www.oset-tedo.ca/eng/directions.html

Accommodation:
Accommodation refers to the prevention and removal of barriers that may prevent people from participating fully in the hearing process, including the parties in an appeal, their representatives and witnesses. Examples of accommodation include providing wheelchair access, sign language interpretation or large print. Parties to an appeal should request any accommodation at the initial teleconference.

Evidence:
Information and documents presented by the parties to the panel, including the information provided during a hearing by a witness who has promised to tell the truth.

Special education program:
An educational program based on and modified by the results of continuous assessment and evaluation. This program includes a plan containing specific objectives and an outline of educational services that meets the needs of the exceptional student.

Special education services:
The facilities and the resources, including support personnel and equipment, necessary for developing and implementing a special education program.

INFORMATION SHEET 4

MEDIATION

NOTE: This *Information Sheet* has been developed to help the parties who appeal to the Ontario Special Education (English) Tribunal. It is for information purposes only, does not contain legal advice and should not be relied on as legal advice.

INTRODUCTION

The mediation process explores the possibility of settling all or some of the issues involved in the appeal. If a hearing is still necessary following mediation, it will take place in accordance with the Tribunal's *Rules of Procedure*.

QUESTIONS AND ANSWERS

What is mediation?

Mediation is a process in which a disagreement between two parties is discussed by them with the help of a neutral third party with the aim of coming to an agreement. It is a voluntary, confidential process. An offer to participate in the process is presented at the pre-hearing conference.

Parties interested in pursuing mediation should notify the Tribunal Secretary (Secretary) when they submit *Form A* and *Form B*.

Is there a charge for mediation?

There is no cost to the parties for mediation services provided by the Tribunal.

Who will be the mediator?

When both parties indicate their interest in mediation, the Tribunal Chair appoints a Tribunal member to mediate the dispute before or during the hearing.

The mediator:

- is trained as a mediator
- does not take sides or impose a decision;
- helps the parties try to reach a mutually acceptable resolution of the issues;

- assists in clarifying and narrowing the issues in dispute;
- cannot serve on the panel that hears this appeal; and
- cannot communicate any information shared during the mediation to any member of the Tribunal.

What if mediation resolves all the issues?

If mediation resolves all the issues of the appeal:

- the parents can withdraw the appeal; or
- the parties can request that the Tribunal issue a consent order, in accordance with the *Rules of Procedure* and the *Practice Direction - Consent Orders*.

What is a consent order?

A consent order is a Tribunal order that is agreed to by both parties. A party may request that the Tribunal issue a consent order when the parties have reached a settlement agreement.

The consent order is limited by the Tribunal's jurisdiction and includes only those parts of the settlement agreement, or an agreed-upon statement of facts, that are within the jurisdiction of the Tribunal and are approved by the Tribunal. A consent order may be filed with the Ontario Superior Court of Justice.

What if mediation resolves some but not all the issues?

If some matters are resolved, they are withdrawn from the appeal. The list of resolved issues can be tabled with the Tribunal as a settlement agreement or an agreed-upon statement of facts if a hearing goes ahead. Under these circumstances, the agreement may be attached to the Tribunal's decision.

What if mediation is unsuccessful in resolving the situation?

If mediation fails to resolve all the issues, the appeal proceeds to a hearing. With the exception of the agreed-on statement of facts or settlement agreement (if one was developed and agreed upon during the mediation), discussions that take place during mediation are confidential and cannot be presented to the panel at the hearing.

WHERE TO FIND MORE INFORMATION

More information is available from the following websites or by contacting the Secretary.

- *Mediation Practice Directions* www.oset-tedo.ca/eng/pdfs/mediation09.pdf

- *Practice Direction - Consent Orders* www.oset-tedo.ca/eng/pdfs/consentOrders09.pdf

- Ontario Special Education (English) Tribunal's *Rules of Procedure* www.oset-tedo.ca/eng/pdfs/rules.pdf

DEFINITIONS

Information about some of the terms in this Information Sheet can be found at:

- Ontario Special Education (English) Tribunal's *Rules of Procedure* www.oset-tedo.ca/eng/pdfs/rules.pdf

- Practice Directions www.oset-tedo.ca/eng/directions.html

INFORMATION SHEET 5

THE HEARING

NOTE: This *Information Sheet* has been developed to help the parties who appeal to the Ontario Special Education (English) Tribunal. It is for information purposes only, does not contain legal advice and should not be relied on as legal advice.

INTRODUCTION

A hearing gives parents the opportunity to present and prove their case to the Tribunal. The hearings are open to the public, except if there is an issue of confidentiality.

QUESTIONS AND ANSWERS

What is the language of hearing?

The hearing is conducted in English. If parents want to address the Tribunal in French or question a witness in French, an interpreter will be provided. Similarly, if parents wish to use American Sign Language as the language of appeal, an interpreter will be provided.

Parties who require interpretation services must notify the Tribunal Secretary (Secretary) in advance so that appropriate arrangements may be made.

What should parties bring to the hearing?

Parties must bring:

- two copies of their binder: one for themselves and one copy for their witnesses; and
- the binder from the other party.

Where is the hearing held?

The Secretary chooses a place close to the area where both parties are located. The hearings are typically held in a hotel or other public location. The Secretary ensures that the location is accessible to persons with disabilities.

What is the length of a hearing?

The hearing lasts as long as it takes to hear all the evidence. This may be from one (1) to five (5) days. The hearing will usually start in the morning with a break for lunch and continue all afternoon.

What is provided at the hearing?

Water is provided. Each party must make their own arrangements for personal needs such as overnight accommodation.

A party who wishes to introduce audio-visual or other information that requires special equipment is responsible for arranging this.

Can witnesses or documents that have not been disclosed be introduced at the hearing?

Normally no new witnesses are introduced after disclosure. Either party may request that new documents be entered or that a new witness be allowed to testify. The other party may object or agree to the presentation of the document or a new witness's testimony after disclosure has occurred. If an objection is raised, reasons are given and the Panel Chair will make a ruling. This decision is final.

Who may attend a hearing?

Hearings are open to the public. Parties can ask that confidential information in exhibits remain private and be stored in sealed files. Witnesses may not attend the hearing until they are called to give their evidence. Following their testimony, witnesses may remain in the room if they wish.

Witnesses are excluded until after they have given their evidence. Other than the court reporter, no one can record the proceedings without the explicit agreement of the Panel Chair,

It should be noted that the board's representatives, usually legal counsel, are allowed to have a person to advise them on behalf of the board. Usually a superintendent is present for the whole hearing even if he/she gives evidence.

How is confidentiality maintained during the hearing?

There may be times when the hearing deals with confidential matters. The Panel Chair may declare the hearing closed either on the request of the parties or because he/she feels that it is necessary.

How do I communicate with the panel during the hearing?

Either party may raise any questions publicly to ensure that all parties hear the information or request. There is no private communication with the panel. Parties must go through the Secretary for specific requests.

How is the case presented to the panel?

The case is usually presented in the following order:

1. introductory statements are made by the Panel Chair;
2. the parties are asked by the Panel Chair if they have any preliminary motions or issues to raise with the panel;
3. opening statement is made by the appellant (parents);
4. opening statement is made by the respondent (board);
5. evidence is presented to the panel, first by the appellant and then by the respondent, calling witnesses one after another;
7. final arguments are made by the appellant;
8. final arguments are made by the respondent;
9. rebuttal by the appellant, if he/she wishes to do so;
10. final statements made by the Panel Chair;
11. adjournment.

What are opening statements?

Parents or their representative usually begin by giving an introduction (opening statement) to the panel summarizing their case. The opening statement includes:

- confirmation that the parents have exhausted their rights of appeal under *Regulation 181/98;*
- why the parents are dissatisfied with the identification and/or placement of the student; and
- the identification and/or placement that they believe will best meet the student's needs (the remedy).

The board usually follows with an opening statement, which will include:

- the position of the board; and
- a response to the remedy sought by the parents.

How is evidence presented at the hearing?

After the opening statements, the case is presented by each party in turn. Parties need to consider the order in which they call witnesses. The witnesses who know the student well are usually presented first.

Does the panel evaluate the procedures and decisions of the IPRC, the SEAB and the board regarding the identification and/or placement of the student?

The panel does not evaluate the procedures of the IPRC, SEAB, and the board. The Tribunal's role is to conduct a new hearing (hearing de novo) based on all the relevant evidence.

Does the panel consider the opening and closing statements when making their decision?

The opening and closing statements and legal arguments are submissions not evidence. In making its decision, the panel will consider submissions, legal arguments as well as the evidence presented.

What should be included in the final argument?

After the presentation of both parties' evidence, each party presents the concluding statements (final arguments), which include:

- a summary of the arguments used to support the party's request to the panel;
- a rebuttal of the other party's arguments; and
- a submission of relevant legal precedents and other Tribunal decisions that support the party's case.

How is the evidence recorded?

The hearing, including witness testimony, is tape-recorded by a court reporter. A party requesting a copy of the transcript must pay the required cost, which is determined by the company providing the transcription services and not by the Tribunal.

What are the Tribunal's expectations regarding the parties' conduct?

Both parties, representatives and witnesses are all expected to be respectful towards everyone at the hearing. Parties must remember that the purpose of the hearing is to determine the appropriate identification and/or placement of the student.

WHERE TO FIND MORE INFORMATION

More information is available from the following websites or by contacting the Secretary.

- Ontario *Regulation 181/98: Identification and Placement of Exceptional Pupils* www.e-laws.gov.on.ca/html/regs/english/elaws_regs_980181_e.htm

- Ontario Special Education (English) Tribunal's *Rules of Procedure* www.oset-tedo.ca/eng/pdfs/rules.pdf

- Previous Tribunal Decisions www.oset-tedo.ca/eng/decisions.html

ACRONYMS

IPRC: Identification, Placement and Review Committee
SEAB: Special Education Advisory Board

DEFINITIONS

Information about some of the terms in this Information Sheet can also be found at:

- Ontario Special Education (English) Tribunal's Rules of Procedure www.oset-tedo.ca/eng/pdfs/rules.pdf

- Practice Directions: www.oset-tedo.ca/eng/directions.html

Exhibit:
A document or object admitted as evidence by the panel. Documents are usually put in a document binder for disclosure. The document binder is not evidence until each document in the binder is presented to the panel and entered as an exhibit at the hearing.

Evidence:
Information and documents presented by the parties to the panel, including the information provided during a hearing by a witness who has promised to tell the truth.

Remedy:
The decision that the parents want the Tribunal to make regarding the identification and/or placement of the student and the special education services for that student.

INFORMATION SHEET 6

AFTER THE HEARING

NOTE: This *Information Sheet* has been developed to help the parties who appeal to the Ontario Special Education (English) Tribunal. It is for information purposes only, does not contain legal advice and should not be relied on as legal advice.

INTRODUCTION

Following the hearing the panel members deliberate, then issue their decision.

QUESTIONS AND ANSWERS

How is the decision made?

Once the hearing ends, the panel meets to review the facts, information and applicable law. Only panel members who heard all the evidence will make the decision. This decision is based on the evidence presented during the hearing.

When does the Tribunal inform the parties of its decision?

The Tribunal will give its decision with reasons within ninety (90) calendar days of the hearing. In some circumstances, the Tribunal may issue an early or interim decision, without written reasons. Written reasons and orders, if any, will follow, usually within the ninety (90) calendar days.

Is the Tribunal's decision available to the public?

The Tribunal must follow the requirements of the *Freedom of Information and Protection of Privacy Act.* This prevents the disclosure of personal information about an identifiable individual without the consent of the individual. The Tribunal must also consider the public's right to know, as well as the need for transparency and due process.

Because of this legislation and sensitive and confidential information about students with special needs, the Tribunal's decisions are written in two formats:

- the official decision, which includes the student's name and other identifying information. Only the parties receive this official version of the decision; and

- the edited decision with all identifying information about the student (e.g., the student's name, date of birth, etc.) deleted. It is this version of the decision that will be posted on the Tribunal's website.

When does the Tribunal remain seized of a case?

The Tribunal may continue to be involved for a specified time with the implementation of its decision. This is called "remaining seized of the case". The Tribunal may remain seized on its own initiative, or upon the request of a party. The process is described in the *Practice Direction - Seized Cases*. The Tribunal may remain seized if it believes that it is in the best interest of the student.

What can a party do if the other party fails to comply with the decision or order of the Tribunal?

If a party believes that the other party is failing to comply with the decision or order of the Tribunal, the party can seek a court order to enforce the Tribunal's decision or order. Once filed, the decision becomes enforceable by the court. Although it is not necessary to have legal representation to do this, the party may want to consider obtaining legal advice before approaching the court.

When will the Tribunal close a case?

A case will be closed by the Tribunal when:

- a decision of the Tribunal has been rendered and the Tribunal has not remained seized of the case;
- the time period for which the Tribunal has remained seized of a case has expired;
- a parent withdraws the appeal; or
- the Tribunal considers it appropriate to close the case based on the particular situation or facts in the specific case.

How can a party challenge the Tribunal's decision?

The *Education Act*, subsection 57 [5] states that the decision of the Tribunal is final and binding. Therefore, there is no right of appeal for a decision of the Tribunal, and a party cannot apply to the Tribunal for a re-hearing.

A party who is dissatisfied with the Tribunal's decision can apply to the Divisional Court for a judicial review of the decision. A party may want to consider getting legal advice if a judicial review of a Tribunal decision is being considered.

It should be noted that according to the *Statutory Powers Procedure Act* an application for a judicial review is not an appeal of the decision.

Can the tribunal's decision be enforced?

In accordance with the *Statutory Powers Procedure Act*, section 19, a decision or a consent order issued by the Tribunal may be filed with the Ontario Superior Court of Justice.

Once filed, the decision becomes enforceable by the court. Although it is not necessary to have legal representation to do this, the party may want to consider obtaining legal advice before approaching the court. If a party believes that the other party is failing to comply with the decision or order of the Tribunal, the party can seek a court order to enforce the Tribunal's decision or order.

How soon can parents apply for another IPRC?

Regulation 181/98, section 21, states that a parent can request another IPRC three (3) months after the date of the Tribunal's decision. A parent can appeal the decision of this subsequent IPRC, by following the same process set out in the Tribunal's *Information Sheet #1 – Appealing to the Ontario Special Education (English) Tribunal*.

Can a party apply to the Tribunal to hear the same appeal?

No. The Tribunal's decision is final and binding on the parties. The parties cannot ask the Tribunal to re-hear the same appeal or to reconsider its decision.

WHERE TO FIND MORE INFORMATION

More information is available from the following websites or by contacting the Secretary.

- *Anonymization of Tribunal Decisions* *http://www.oset-tedo.ca/eng/pdfs/anonymization.pdf*
- *Education Act, Section 57* www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90e02_e.htm#BK76
- *Freedom of Information and Protection of Privacy Act* *www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90f31_e.htm*
- Ontario *Regulation 181/98: Identification and Placement of Exceptional Pupils* www.e-laws.gov.on.ca/html/regs/english/elaws_regs_980181_e.htm
- Ontario Special Education (English)Tribunal's *Rules of Procedure* www.oset-tedo.ca/eng/pdfs/rules.pdf
- *Practice Direction - Seized Cases* www.oset-tedo.ca/eng/pdfs/seizedCases09.pdfn
- Previous Tribunal Decisions www.oset-tedo.ca/eng/decisions.html
- *Statutory Powers Procedure Act* *www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90s22_e.htm*

ACRONYMS

IPRC: Identification, Placement and Review Committee

DEFINITIONS

Information about some of the terms in this Information Sheet can also be found at:

- Ontario Special Education (English) Tribunal's *Rules of Procedure* www.oset-tedo.ca/eng/pdfs/rules.pdf

- Practice Directions: www.oset-tedo.ca/eng/directions.html