



# The Ontario Special Education (English) Tribunal

**Subject:** PRACTICE DIRECTION – CONSENT ORDERS

**Date of Issue:** May 2006

**Dates of Amendments:** January 2007, October 2008, May 2009, January 2011

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**NOTE:** Practice Directions support the Tribunal's *Rules of Procedure*. In particular, they set out procedures to achieve uniformity in practice. In addition, they tell parties what the Tribunal expects of them and what the parties can expect of the Tribunal. In the event of an inconsistency with the *Rules*, the *Rules* govern.

## INTRODUCTION

The purpose of this practice direction is to provide guidelines for the issuing of consent orders and to describe how the Tribunals address a settlement agreement, which is jointly submitted by the two parties.

### What is a Consent Order?

A consent order is any 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 will be limited by the Tribunal's jurisdiction and will include only those parts of the settlement agreement that are within the jurisdiction of the Tribunal and are approved by the Tribunal. The Tribunal's Rules for issuing consent orders are described in the Tribunal's *Rules of Procedure*.

The Tribunal's jurisdiction to issue a consent order is set out in section 4.1 of the *Statutory Powers Procedure Act (SPPA)*, which states the following:

"If the parties consent, a proceeding may be disposed of by a decision of the Tribunal given without a hearing, unless another *Act* or a regulation that applies to the proceeding provides otherwise."

## PRACTICE DIRECTION

The parties to the appeal may be able to settle their differences without a Tribunal hearing by entering into a settlement agreement that sets out the terms reached between the two (2) parties.

By the time of the pre-hearing conference the Chair will have assigned three (3) members to a hearing panel and a fourth Tribunal member to provide mediation assistance to the parties, as

required and agreed upon by the parties. Refer to the Tribunal's policy for mediation within the *Rules* and the related practice direction for mediation.

1. When an agreement is reached:
  - a) The appellant may withdraw the appeal; or
  - b) The parties to the appeal may request that the *Settlement Agreement* become the basis of a consent order (see the Tribunals' *Rules of Procedure and Practice Direction – Consent Orders*).
2. Where both parties request a consent order, they will:
  - a) File the signed settlement agreement with the Tribunal to be provided to the Panel Chair; or
  - b) Request a consent order directly from the Panel Chair if an agreement is reached by the Parties during a hearing.
3. Where the consent order deals specifically with the issues of identification and placement, the order must:
  - a) include the student's identification and special education placement; and
  - b) describe how the placement will address the student's strengths and needs.
4. If there are concerns with the *Settlement Agreement*, as written and submitted, the Panel Chair will communicate the concerns to the parties in writing or by teleconference and invite the parties to submit an amended agreement, which takes those concerns into account.
5. When a consent order is issued by the Tribunal, the *Settlement Agreement* may be attached.
6. When the Tribunal declines to issue a consent order based on the *Settlement Agreement*, as submitted:
  - a) the parties may submit an amended agreement for further consideration;
  - b) the parties may make an agreement between themselves and agree that the appellant will withdraw the appeal;
  - c) the appellant may withdraw the appeal; or
  - d) either party may request that the Tribunal proceed with hearing the appeal.
7. The parties will respond within fourteen (14) days of receiving the Tribunal's decision regarding the consent order request, stating which of the above options they choose. If the parties do not respond after fourteen (14) days, the Tribunal may issue an order disposing of the appeal.
8. Once the Tribunal issues a consent order as a result of a *Settlement Agreement* being reached by the parties, the parties are no longer entitled to a hearing on the merits of the appeal. Where the *Settlement Agreement* resolves only part of an appeal, the parties

may still proceed to a hearing on the merits of those issues which are not addressed in the settlement agreement and consent order. Where there is disagreement between the parties on the interpretation or implementation of the consent order and settlement agreement, however, a party may request that the Tribunal hold a hearing to address such interpretation and implementation issues only.

9. When a consent order has been issued, the Tribunal's jurisdiction is only in respect of the implementation of the consent order.