



The Ontario Special Education (English) Tribunal

Subject: PRACTICE DIRECTION – MEDIATION

Date of Issue: May 2008

Dates of Amendments: May 2009, August 2010, January 2011

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 Ontario Special Education Tribunal's mandate is to adjudicate disputes between parents and school boards and to make decisions and orders about the identification and placement of exceptional pupils.

During the past few years, Alternative Dispute Resolution (ADR) and, in particular, mediation has become a widely used and successful approach to resolving disputes. The Tribunal may assist the parties to an appeal to resolve their disputes through mediation and avoid having to go on to a hearing. Trained tribunal members are available to parties who have indicated their willingness to enter into mediation.

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*.

The mediation process, as set out below, is integrated into the established appeal process and the Tribunal's *Rules of Procedure*. In accordance with the *Rules*, the Tribunal may waive or vary the application of this practice direction in such circumstances that are just.

PRACTICE DIRECTION

Step 1 – Pre-Hearing

The Tribunal Chair ("Chair") will identify three (3) members for a hearing panel and one (1) member to provide mediation, as required.

Pursuant to the Tribunal's *Rules of Procedure*, the pre-hearing conference will include setting a date for mediation, if the parties have indicated an interest in pursuing mediation.

Within ten (10) days of the conference call, the parties will file the *Agreement to Mediation* with the Tribunal. (see Appendix A)

Within ten (10) days following receipt of the *Agreement to Mediation*, a *Notice of Mediation* will be sent to both parties. This notice will include the date, time and location for the mediation to take place.

Any issues that arise prior to the commencement of the hearing may be considered for mediation.

Step 2 – During a Hearing

At any point during a hearing, the parties may request mediation to assist in resolving an issue. The Panel Chair may temporarily adjourn the proceeding to provide an opportunity for mediation to take place.

If mediation had already taken place with a tribunal member as mediator, that same mediator will be invited to resume mediation. If the parties had not previously agreed to mediation, the Chair will appoint a mediator to assist the parties at this stage.

Step 3 – Results of Mediation

Discussions that take place during mediation remain confidential and may not be raised at a hearing convened for hearing the same dispute in full or in part. The mediator cannot give evidence at a hearing in the case, nor can he or she be compelled to attend as a witness in any other relevant proceeding. The mediator cannot disclose any information related to the mediation to the panel hearing the case. The mediator cannot give legal advice to the parties and cannot draft any agreement reached by the parties as a result of the mediation. Any information disclosed during mediation will only be disclosed to the hearing panel if both parties agree to do so.

It is important that the mediation process does not interfere with the timely resolution of the dispute. At the end of the mediation, the mediator prepares a report, in co-operation with the parties, reporting the results of the mediation to the Chair. The report is signed by the parties and the mediator and will include the following information:

a) If all matters in dispute are resolved, the appeal will be withdrawn by the appellant. If the appeal is not withdrawn by the appellant within ten (10) days of agreeing that all issues have been resolved, the Tribunal will issue an order disposing of the appeal without a hearing.

b) If all matters in dispute are resolved and the parties request a consent order setting out the agreement, the Tribunal's *Consent Order Rule* and *Practice Direction - Consent Orders* will be followed.

c) If all matters in dispute are resolved, the Tribunal may, when deemed appropriate, remain seized in accordance with the Tribunal's *Seized Cases Rule* and the *Practice Direction - Seized Cases* will be followed.

d) If some matters in dispute are resolved, those matters may be withdrawn from appeal. The *Settlement Agreement* on those issues may be tabled with the Tribunal as an agreed statement of facts at the hearing and in that case, the agreement will be attached to the Tribunal decision. Alternatively, the Tribunal will dispose of the agreed-upon issues without a hearing and will issue an order accordingly.

e) If none of the matters in dispute is resolved, the Tribunal will be advised of this fact and the hearing of the appeal will then commence or resume.

f) If it appears that mediation will not resolve the issues in dispute, the Tribunal will proceed with hearing the appeal.



Appendix A

Agreement to Mediation

BETWEEN:

..... Appellant

-and-

..... Respondent

- 1. The appellant has appealed to the Ontario Special Education (English) Tribunal ("the Tribunal") to resolve his/her complaint regarding the identification and/or special education placement of his/her child, who is a student within the respondent school board. The Tribunal has offered the parties the opportunity to mediate and attempt to resolve some or all of the issues in dispute in the complaint. We understand that participation in mediation is voluntary and that mediation will not proceed without the consent of both parties.
2. We have reviewed and understand the Tribunal's Rules and the Practice Direction - Mediation and agree to comply with these Rules and direction.
3. We agree to attend and participate in the mediation session. We agree that those who attend the mediation will respect the process and be courteous to all participants. We agree that the appellant(s) and the respondent(s), or their representatives, have the authority to make a binding agreement at the mediation.
4. We understand that the mediator who will conduct the mediation session is a member of the Tribunal, who has been assigned by the Chair. We understand that, in the event that the mediation is unsuccessful, the mediator will not sit as a member of the panel hearing the complaint and will not communicate any information about the mediation to the members of the hearing panel without the written consent of both parties.

5. We understand and agree that this is a confidential process. All documents provided for the purposes of the mediation and all statements made during the mediation are without prejudice and cannot be used by the other party in evidence before the Tribunal or in any other civil proceeding.
6. We understand and agree that if the parties reach an agreement on all matters in dispute between the parties, the appeal will be withdrawn by the appellant or the Tribunal will issue an order disposing of the appeal without a hearing.
7. We understand that the agreement may form the basis of a consent order issued by the Tribunal, in accordance with the Tribunal's *Practice Direction – Consent Orders*.
8. We understand that the Tribunal may remain seized over the implementation of the agreement if deemed appropriate, in accordance with the Tribunal's *Practice Direction - Seized Cases*.
9. We understand and agree that if, during mediation, the parties reach an agreement on one or more facts or issues, the parties shall indicate their agreement and consent in writing before leaving the mediation session.
10. We understand and agree that if, during mediation, the parties have signed a *Settlement Agreement*, such agreement in respect of those facts or issues may be referred to in a Tribunal proceeding, with the consent of all parties and in accordance with the Tribunal's *Rules of Procedure*.
11. We understand and agree that if mediation does not resolve some or all of the issues in dispute, the Tribunal will convene to hear the appeal.
12. We understand and agree that the mediator will report the outcome of the mediation to the Chair. We agree to participate in the preparation of the report at the end of the mediation session, and will indicate our agreement by signing the report. We understand that the Tribunal will determine how to proceed after that and that the decision will be communicated to the parties by the Tribunal.
13. We understand and agree that the mediator cannot disclose any information related to the mediation to the hearing panel. The mediator cannot give legal advice to the parties and cannot draft any agreement reached by the parties as a result of the mediation.
13. We agree that the parties will not summons the mediator as a witness before the Tribunal or in any other related civil proceeding in respect of any matters discussed at or related to the mediation and that the parties will not summons the mediator's notes or records at a hearing of the Tribunal or any other civil proceeding.

Appellant's Signature / Date

Respondent's Signature/ Date



The Ontario Special Education (English) Tribunal

RECORD OF ATTENDEES

CONFIDENTIALITY AGREEMENT

I understand and agree that this is a confidential process and therefore I cannot disclose any information related to the mediation.

Names of all those in attendance (Please print)

Signatures

Appellant

Respondent

Mediator

On behalf of the Tribunal

Date of Mediation _____