



# The Ontario Special Education (English) Tribunal

## Rules of Procedure

for Hearings Conducted Under the *Education Act*

### 1.0 PREAMBLE

- 1.1 The purpose of these *Rules of Procedure* (“Rules”) is to provide an effective, expeditious, and accessible process consistent with procedural fairness and the principles of natural justice, for those involved in appeals before the Tribunal.
- 1.2 Parties should refer to the *Information for Parties* for an explanation of the tribunal process.

### 2.0 GENERAL

- 2.1 The *Rules* are made pursuant to s. 25.1 of the *Statutory Powers Procedure Act* (“SPPA”). The *Rules* apply to appeals under s. 57 of the *Education Act*, as it may be amended from time to time.
- 2.2 The Tribunal may exercise any of its powers under these *Rules* on its own initiative or at the request of a party.
- 2.3 The Tribunal may control its own processes and may issue policies, practices, and procedures as it sees fit.
- 2.4 Where it is fair to do so, the Tribunal may waive or vary at any time the application of any of the *Rules*, policies, practices and procedures.
- 2.5 The *Rules* may be amended by the Tribunal from time to time.
- 2.6 The *Rules*, and all amendments to the *Rules*, shall be made available in both English and French.
- 2.7 Where an issue arises that is not covered by these *Rules*, it shall be resolved in a manner consistent with these *Rules*, the purpose of the *Rules*, the principles of natural justice, the *SPPA*, and the *Education Act* or any other *Act* under which the issue arises.
- 2.8 Substantial compliance with the requirements respecting the content of forms, notices, or submissions under the *SPPA* or these *Rules* is sufficient.

### **3.0 DEFINITIONS**

In these Rules:

- 3.1 “advocate” means  
(i) a friend, family member, or neighbour who accompanies and assists the party on a volunteer basis; or  
  
(ii) such other person who accompanies and assists the party and who is permitted to provide legal services without a license as set out in s. 30 of By-Law 4 made under section 62 (0.1) of the Law Society Act, R.S.O. 1990 c.L.8;
- 3.2 “agreed statement of facts” means a statement of facts regarding the matters at issue before the Tribunal on which the parties agree and which is submitted to the Tribunal;
- 3.3 “appeal” means a proceeding initiated pursuant to s. 57 of the *Education Act*;
- 3.4 “appellant” means an adult pupil or a parent or legal guardian of a pupil pursuing an appeal;
- 3.5 “Chair” means the member who is appointed by the Lieutenant Governor in Council as Chair of the Ontario Special Education (English) Tribunal;
- 3.6 “document” means any record of information however recorded, whether in printed form, on film, by electronic means, or otherwise, and includes printed or handwritten text, sound recording, videotape, file, photograph, chart, graph, map, plan, survey, and book of account;
- 3.7 “expert witness” is a qualified individual called to testify at a hearing, who is recognized as having scientific and/or technical expertise in a particular field of knowledge, and can, therefore, provide an opinion on a particular subject including the factual basis for that opinion;
- 3.8 “filing” means the delivery of documents to the Secretary of the Tribunal in accordance with these *Rules*;
- 3.9 “hearing panel” means the panel of tribunal members hearing the appeal;
- 3.10 “holiday” means a Saturday, Sunday, Canada Day, Civic Holiday (August), Labour Day, Remembrance Day, Family Day, Good Friday, Easter Monday, Victoria Day, a day appointed by the Governor General or the Lieutenant Governor as a public holiday or for Thanksgiving, and a day within either a December vacation or a March break as designated by the school board;
- 3.11 “mediation” is a confidential principled negotiation process, where, with the consent of all parties, a mediator assists in resolving all or part of an appeal or assists in narrowing the issues to be decided at the hearing;
- 3.12 “mediator” is any trained person assigned by the Chair to conduct mediation on behalf of the Tribunal;

- 3.13 “order” means a direction issued by the Tribunal in a decision, which is legally binding on the parties;
- 3.14 “Panel Chair” means the Chair of the hearing panel;
- 3.15 “party” means an appellant initiating or a school board responding to an appeal;
- 3.16 “proceeding” means any or all steps in an appeal;
- 3.17 “representative” means a person appointed by a party to represent the party in the appeal which includes legal counsel or another representative;
- 3.18 “respondent” means the party who responds to the allegations of the appellant in a hearing;
- 3.19 “Rules” means the *Rules of Procedure* for the Ontario Special Education (English) Tribunal;
- 3.20 “school board” means the District School Board or School Authority responding to an appeal;
- 3.21 “Secretary” means the Secretary of the Ontario Special Education (English) Tribunal or his or her designate;
- 3.22 “seized” means that the Tribunal retains jurisdiction over the implementation of its decision and orders for a specified period of time;
- 3.23 “service” means the delivery of documents to any person or party or to their representative in accordance with these *Rules*;
- 3.24 “settlement agreement” means a signed agreement made by the parties and submitted to the Tribunal, thereby eliminating or narrowing the issues in dispute; and
- 3.25 “Tribunal” means the Ontario Special Education (English) Tribunal.

#### **4.0 TIME COMPUTATION**

- 4.1 In the computation of time under these *Rules* or in any decision of the Tribunal:
- a) a “day” is a calendar day;
  - b) where there is a reference to a number of days between two events, they shall be counted excluding the day on which the first event happens and including the day on which the second event happens;
  - c) where the time for doing an act under these *Rules* expires on a holiday, the act may be done on the next day that is not a holiday;
  - d) where a document has been received, or would be deemed to be received, on a holiday, it shall be deemed to be received on the next day that is not a holiday;
  - e) where a period of less than seven (7) days is prescribed, holidays shall not be counted;

- f) the Tribunal may, at any time and on such conditions as it considers appropriate, lengthen or shorten the time for the performance of any obligation under these *Rules*;
- g) the Tribunal may direct a party or parties to appear before the Tribunal within a specific timeline; and,
- h) where the *Rules* require the Tribunal to perform certain actions within a specific time, the failure to do so will not cause the Tribunal to lose jurisdiction where the action required is performed after the required date.

## **5.0 SERVICE AND FILING OF DOCUMENTS**

5.1 A document is deemed to have been served, when it is sent by one of the following means:

- a) by regular, registered, or certified mail: five (5) days after the day of mailing;
- b) by overnight courier: two (2) days after the document was given to the courier by the sending party;
- c) by facsimile: on the day of the transmission; or
- d) by e-mail: to be followed by a signed original within ten (10) days.

5.2 A document is deemed to have been filed, when it is sent by one of the following means:

- a) by regular, registered, or certified mail: five (5) days after the day of mailing;
- b) by overnight courier: two (2) days after the document was given to the courier by the sending party;
- c) by facsimile: on the day of the transmission; or
- d) by e-mail: to be followed by a signed original within ten (10) days.

5.3 Fax transmissions (including cover sheet) must not exceed twenty (20) pages, except with the consent of the intended recipient.

5.4 Documents served or filed after 5:00 p.m. shall be deemed to have been served or filed on the next business day that is not a holiday.

5.5 Where the authenticity of a document is in dispute:

- a) the Tribunal may direct that the party with custody of the original document produce it for inspection to the other parties, either at a scheduled hearing or at another time;
- b) the Tribunal may direct that the original document, a copy of which has been served or filed, be sent to the Tribunal by mail or courier.

5.6 A party who serves or files a document shall include with it the name, address, and telephone number of the sender and the receiver, and the name of the proceeding to which the document relates.

## **6.0 COMMUNICATIONS WITH THE TRIBUNAL**

- 6.1 All communications with the Tribunal outside a hearing must take place through the Secretary.
- 6.2 After the appeal is filed, parties must copy the other party on all communications with the Tribunal.
- 6.3 Where a party has a representative, all the Tribunal's communications with that party shall be through the representative.

## **7.0 COMMENCEMENT OF APPEAL**

- 7.1 In accordance with subsection 57(3) of the *Education Act*, an appellant may appeal to the Tribunal concerning the identification and/or placement of the pupil if the appellant:
  - a) has exhausted all rights of appeal under the regulations in respect of the identification of the pupil as an exceptional pupil and/or the placement of the pupil; and
  - b) is dissatisfied with the decision in respect of the identification and/or placement.
- 7.2 Upon being advised in writing by an appellant of his/her intention to appeal, the Secretary shall notify the Chair and the school board. The Secretary shall send to the appellant a copy of the *Rules*, including *Form A: Notice of Appeal*.
- 7.3 Within twenty (20) days of the receipt of *Form A*, the appellant shall file with the Secretary a completed *Form A*, with the required attachments.
- 7.4 Upon receipt, the Secretary shall send the completed *Form A*, with the required attachments, to the Chair and the school board.
- 7.5 Within ten (10) days of the receipt of the completed *Form A*, the school board shall file with the Secretary its completed *Form B*, with the required attachments, (if any).
- 7.6 Upon receipt, the Secretary shall send the completed *Form B*, with any required attachments, to the Chair and the appellant.

## **8.0 PRE-HEARING CONFERENCE**

- 8.1 A pre-hearing conference ("conference") with the hearing panel and the parties will be held within twenty (20) days of the receipt of the completed *Form B* by the Secretary. The purpose of the conference is to discuss:
  - a) the identification of the parties;
  - b) the identification of any other persons who, in the opinion of one or more parties, may be affected by the proceedings;

- c) the identification of any accommodation needs of the parties or participants;
  - d) the identification and clarification of issues and remedies;
  - e) the setting of dates for mediation, if the parties have agreed to participate in mediation;
  - f) the setting of dates for the exchange of information and disclosure;
  - g) the setting of dates for hearing preliminary motions (including jurisdictional issues); and
  - h) the setting of dates for the hearing on the merits of the appeal.
- 8.2 The conference may consider any procedural matters, including, but not limited to, the following:
- a) issues relating to disclosure and the exchange of information;
  - b) identification of preliminary motions;
  - c) procedural issues, including the dates by which any steps in the proceeding are to be taken and/or completed;
  - d) the estimated duration of the hearing; and
  - e) the method(s) by which evidence shall be presented.
- 8.3 During the conference the hearing panel may make such rulings as deemed necessary for the proper disposition of the proceeding.
- 8.4 The hearing panel may decline to rule on any issue raised at the conference and may instead direct that the issue be dealt with during the hearing.
- 8.5 Where a party receives a notice of the conference and the party fails to attend without having notified the Tribunal, the hearing panel may proceed in his/her absence.
- 8.6 During the conference, the panel chair will ask whether the parties are willing to participate in a mediation process. If the parties agree to participate in mediation, the hearing panel will set hearing dates that allow the parties a reasonable period of time within which to attempt to mediate all or some of the issues in the appeal.
- 8.7 The hearing panel may direct a further conference to deal with any issues as set out in this rule.

## **9.0 MEDIATION**

- 9.1 Mediation, as further outlined in the *Practice Direction - Mediation* may be held for the purpose of attempting to reach a settlement or to simplify the issues. The Tribunal will offer to provide mediation at the time of the conference. The member of the Tribunal who conducts the mediation shall not participate at the hearing of the appeal.
- 9.2 The mediator may exclude everyone but the parties from the mediation.
- 9.3 All documents submitted and all statements made at the mediation are confidential and without prejudice.
- 9.4 Any documents shared at the mediation shall:

- a) be returned to the party who filed the documents; or
- b) be destroyed after the mediation;
- c) not be considered to have been filed in the proceeding; and
- d) not be used by the other party in evidence before the Tribunal or in any other civil procedure.

- 9.5 The mediator shall prepare a report in accordance with the *Practice Direction - Mediation*.
- 9.6 If the parties do not settle the appeal in its entirety, the hearing will take place without reference to the information disclosed during mediation, except with the prior consent of all parties.
- 9.7 Where the parties have reached an agreement on any of the issues in the proceeding, the Tribunal will dispose of these issues without a hearing and will issue an order accordingly.
- 9.8 Where the parties have reached an agreement on all of the issues in the proceeding, the Tribunal will issue an order disposing of the appeal.
- 9.9 The Tribunal may issue a consent order, in accordance with the *Practice Direction – Consent Orders*.
- 9.10 When deemed appropriate, the Tribunal may remain seized in accordance with the *Practice Direction – Seized Cases*.
- 9.11 Although the Tribunal encourages mediation, where it appears that the parties will not reach an agreement, the Tribunal will proceed with the appeal.

## **10.0 FORMAT OF PROCEEDINGS**

- 10.1 Proceedings may be conducted in a variety of formats, including in person, in writing (by exchange of documents), by electronic means (by teleconference or video-conference), or any combination of these, as determined by the Tribunal.
- 10.2 The Tribunal may impose any conditions regarding a written or electronic hearing that it considers appropriate.
- 10.3 The Tribunal shall not hold a written hearing or an electronic hearing if a party satisfies the Tribunal that there is a good reason for not doing so, unless the only purpose of the hearing is to deal with procedural matters.
- 10.4 Hearings will be open to the public except where the Tribunal is of the opinion that:
  - a) matters involving public security may be disclosed; or
  - b) intimate financial or personal matters or other matters of a similar nature may be disclosed, and the interest in avoiding disclosure outweighs the public interest of an open hearing.

- 10.5 Where a hearing or part of a hearing is closed, the Tribunal may make such orders as are appropriate to maintain the confidentiality of the hearing and the documents referred to therein.
- 10.6 In accordance with Section 23(3) of the *SPPA*, the Tribunal may exclude anyone from a hearing who is appearing on behalf of a party, or is acting as an adviser to a witness, if it finds that such person is not competent to appropriately represent or advise the party or witness, or who does not understand and comply with the duties and responsibilities of an advocate or advisor. This rule does not apply to anyone licensed under the *Law Society Act*.

## **11.0 PRELIMINARY MOTIONS**

- 11.1 A party who wishes to bring a preliminary motion must notify the Secretary.
- 11.2 The Secretary will arrange for a pre-hearing conference with the parties and the hearing panel.
- 11.3 At the conference, the hearing panel will set dates for:
- a) the exchange of materials on the motion;
  - b) the hearing of the motion.
- 11.4 The party bringing the motion shall serve the responding party and file with the Tribunal on or before the date set by the hearing panel a statement setting out:
- a) the grounds for the motion;
  - b) the remedy sought;
  - c) the witnesses, if any, to be called on the motion;
  - d) a summary of the witnesses' evidence; and
  - e) a list of any documents that are to be introduced as evidence.
- 11.5 The party responding to the motion shall serve the party bringing the motion and shall file with the Tribunal on or before the date set by the hearing panel at the conference:
- a) its statement responding to the motion;
  - b) the witnesses it intends to call on the motion;
  - c) a summary of the witnesses' evidence; and
  - d) a list of any documents that are to be introduced as evidence.
- 11.6 The preliminary motion may be heard before or at the same time as the hearing of the appeal.

## **12.0 EXCHANGE OF INFORMATION AND DISCLOSURE**

- 12.1 On or before a date set by the hearing panel, normally thirty (30) days before the hearing of the appeal, the appellant will:

- a) serve the school board and file with the Tribunal a list of witnesses and for each witness a summary of his or her evidence; and
  - b) serve the school board and file with the Tribunal a book or binder containing a copy of all documents which he or she intends to rely upon at the hearing.
- 12.2 On or before a date set by the hearing panel, normally fifteen (15) days before the hearing of the appeal, the school board will:
- a) serve the appellant and file with the Tribunal a list of witnesses and a summary of the witnesses' evidence; and
  - b) serve the appellant and file with the Tribunal a book or binder containing a copy of all documents which it intends to rely upon at the hearing.
- 12.3 At any time in a proceeding, the Tribunal may order any party to provide to the other party and to the Tribunal such particulars, information, or documents as the Tribunal considers necessary to enable the other party or the Tribunal to obtain a full and satisfactory understanding of the issues.
- 12.4 If a party wants to submit a document or other item as evidence but has failed to disclose this document, the party may not refer to the document in evidence at the hearing without the consent of the Tribunal, which may be given on such terms and conditions as the Tribunal considers just.
- 12.5 If the good character, propriety of conduct, or competence of a party is an issue in a proceeding, the party making such allegations shall, before the hearing, disclose to the party against whom the allegations are made the nature of the allegations and all evidence in the party's possession or control relevant to the allegations.
- 12.6 The appellant and the respondent to the proceeding will file with the Tribunal four (4) copies of all documents they intend to rely on and bring to the hearing three (3) additional copies.

### **13.0 WITNESSES**

- 13.1 The student who is the subject of the appeal and is sixteen (16) years of age or older is encouraged attend the hearing and to serve as a witness in accordance with the *Practice Direction – Student as Witness*.
- 13.2 Not less than fifteen (15) days before the commencement of the hearing, a party who intends to call an expert witness shall serve on every other party and file with the Tribunal:
- a) a statement of the name, address and qualifications of the expert witness;
  - b) the report of the expert witness or, where a report is not prepared but the expert witness is to testify, a summary of the proposed testimony; and
  - c) the expert witness's resume.

- 13.3 The Tribunal may issue a summons to a potential witness who is not willing to appear voluntarily at a hearing or requires an official document in order to be present at the hearing.
- 13.4 To obtain a summons from the Tribunal, the party who wants a witness to attend at the hearing must fill out a *Request for Summons* form and submit it to the Tribunal not less than fifteen (15) days before the hearing. The party must complete the *Request for Summons* form in accordance with the *Practice Direction – Issuing a Summons*.
- 13.5 Once the Tribunal has approved the request, the Tribunal will provide a Summons to the party. The summons must be served personally on the person to whom it is directed together with attendance money calculated in accordance with Tariff A of the *Rules of Civil Procedure*. The *Summons* must be served no later than five ten (10) days before the time of attendance.

#### **14.0 EVIDENCE**

- 14.1 The hearing panel may direct in what form evidence shall be presented.
- 14.2 The hearing panel may admit any evidence, including hearsay, relevant to the subject-matter of the proceeding.
- 14.3 The hearing panel may accept into evidence any written statement of facts agreed upon by the parties.
- 14.4 The book or binder of documents referred to in Section 12 is not evidence before the hearing panel until such time as each document is entered as an exhibit at the hearing.

#### **15.0 DECISIONS**

- 15.1 The Tribunal shall provide the parties or their representatives with a copy of the Tribunal's decision on the appeal, including its written reasons, within ninety (90) days after completion of the hearing.
- 15.2 The Tribunal may at any time clarify and/or correct a typographical error, error of calculation, misstatement, ambiguity, technical error, or other similar error made in its decision.
- 15.3 The Tribunal may make interim decisions and orders. An interim decision or order need not be accompanied by reasons.

#### **16.0 PANEL MEMBERS**

- 16.1 Where a member of a hearing panel who has participated in a hearing becomes unable, for any reason, to complete the hearing or to participate in the decision making, the remaining member or members may complete the hearing and issue a decision.

- 16.2 If the term of office of a Tribunal member who has participated in a hearing expires before a decision is issued, the member's term shall be deemed to continue for the purpose of completing the decision.

## **17.0 CONSENT ORDERS**

- 17.1 An agreement reached between the parties, that is within the jurisdiction of the Tribunal may be issued as a consent order by the Tribunal at the request of the parties.
- 17.2 The Tribunal will follow the procedures for issuing a consent order as outlined in the *Practice Direction – Consent Orders*.

## **18.0 SEIZED CASES**

- 18.1 The Tribunal may, when deemed appropriate, remain seized of a decision for a specified period of time in accordance with the *Practice Direction - Seized Cases*.

## **19.0 DISMISSAL OF AN APPEAL WITHOUT A HEARING**

- 19.1 The Tribunal may dismiss an appeal without a hearing for any of the following reasons:
- a) the appeal is frivolous, vexatious, or commenced in bad faith;
  - b) the appeal relates to matters that are outside the jurisdiction of the Tribunal;
  - c) the appellant has not satisfied subsection 57(3) of the *Education Act*;
  - d) some other aspect of the legislative requirement for bringing the appeal has not been met; and
  - e) one or both of the parties have not complied with the directions of the Tribunal.
- 19.2 If the Tribunal proposes to dismiss an appeal without a hearing, it shall send a notice to all of the parties, stating:
- a) the reasons for the proposed decision; and
  - b) the deadline for making submissions.
- 19.3 The parties who receive the notice sent under Rule 19.2 may file written submissions with the Tribunal within the time set out in the notice, which is usually fourteen (14) days after the date of the notice.
- 19.4 The Tribunal, after considering any submissions filed by the parties, may:
- a) dismiss the appeal with or without further reasons; or
  - b) decide that the matter should proceed to a hearing.

The Tribunal shall notify the parties of its decision.