



The Ontario Special Education (English) Tribunal

Subject: PRACTICE DIRECTION – STUDENT AS WITNESS

Date of Issue: Sept. 2009

Dates of Amendments: February 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 student is the focus of the appeal process. Allowing students to testify gives them a voice within the process and allows them to talk about issues that affect their learning at school.

This *Practice Direction* is intended to assist the parents and the school board in deciding whether or not to call the student as a witness at the hearing.

PRACTICE DIRECTION

When deciding whether or not a student should appear as a witness, consider:

- the age and maturity of student; and
- the intellectual, emotional, and physical capabilities of the student.

Students age sixteen (16) and over can testify on their own behalf. The Tribunals' *Rules* and *Code of Conduct* regarding witnesses, the parties to an appeal and representatives also apply to students who appear as witnesses on their own behalf.

Where a school board wants to summons a student, it is preferable that the parents and the school board work together to come to an agreement about the level and form of the student's involvement.

The Tribunal encourages both parties to make the decision of whether or not the student will appear as a witness soon after the pre-hearing conference and within the disclosure timelines set out in the *Rules of Procedure*.

STEPS TO REVIEW WITH THE STUDENT WITNESS

When a student is called to testify as a witness, the following steps will occur:

1. The student will first be asked to state his or her name and then swear or affirm to tell the truth to the Tribunal.
2. The party calling the student as a witness will then ask questions of the student (direct examination).
3. Next, the other party is entitled to question (cross-examine) the student.
4. Afterwards, the party calling the witness will be able to ask the student more questions arising from any previous questions.
5. The members of the hearing panel may ask questions arising from any previous questions or may also introduce new information through questioning.
6. Once all questioning is completed, the student may remain for the balance of the hearing or leave the hearing room.

OTHER CONSIDERATIONS

1. A student may need specific accommodations during the hearing in order to provide for his or her physical, intellectual or communicational disabilities. Informing the Tribunal of the need for such accommodations as early as possible will allow all participants to prepare for such an eventuality.
2. If the parties consider that the student's testimony should be closed to the public, a request to the Tribunal should be made at the beginning of the hearing. The Tribunal will then make a decision on this request after hearing from both the parent and the school board.
3. Parents may wish to consider having an additional adult attend the hearing with them to act as a support person to the student.