

Education tribunal rejects attempt to circumvent appeal process

The Ontario Special Education Tribunal has rejected an attempt by parents to take a matter directly to it before exhausting the appeal process provided under the *Education Act*. The case, *Lang and Boisvert v. Le Conseil des écoles catholiques de langue française du Centre-Est* (May 5, 2004), involved parents who were dissatisfied with the placement of their autistic child by an Identification, Placement and Review Committee (IPRC). Under Regulation 181/98, the IPRC

- decides whether a student should be identified as exceptional;
- identifies the areas of the student's exceptionality;
- decides an appropriate placement for the student; and
- reviews the identification and placement at least once in each school year.

Students who are determined to be exceptional are placed in a special education program. Under the Regulation, if parents are dissatisfied with the IPRC's decision as to either identification or placement, they may appeal to a special education appeal board (SEAB). The SEAB is composed of three members – one selected by the parents, one by the school board and a chairperson jointly chosen by the other two appointees.

In this case, the parents selected a lawyer as their representative on the SEAB and requested that the school board pay the lawyer's fees. The school board refused, and the parents appealed to the Tribunal.

The school board argued that the Tribunal had no jurisdiction to hear the appeal, pointing to subsection 57(3) of the *Education Act*, which provides

"[w]here a parent or guardian of a pupil has exhausted all rights of appeal under the regulations in respect of the identification or placement of the pupil as an exceptional pupil and is dissatisfied with the decision in respect of the identification or placement, the parent or guardian may appeal to a Special Education Tribunal for a hearing in respect of the identification or placement."

The school board noted that the Regulation provides that appeals of decisions of the IPRC must first be taken to the SEAB. Therefore, by appealing directly to the Tribunal, the parents had not exhausted their appeal rights.

The parents argued that their inability to pay their representative on the SEAB meant that they had exhausted their appeal rights under the Regulation. In addition, they contended that the timelines specified in the Regulation for having the matter heard by the SEAB had been missed and that this had also served to extinguish their appeal rights.

The Tribunal sided with the school board, holding that, in the circumstances of this case, it did not have jurisdiction to hear the parents' appeal, in light of the wording of subsection 57(3) of the *Education Act*. Moreover, it held that, because subsection 27(2) of Regulation 181/98 refers only to travel and other expenses incurred by members of the SEAB, the school board had no obligation to pay the lawyer's fees.

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