

Section 3.

SPECIAL EDUCATION LEGISLATION IN ONTARIO

SEAC representatives should be familiar with the provincial legislation related to education, particularly those areas of the *Education Act* and the Regulations that deal with special education matters. In addition, SEAC representatives should also be aware that the Canadian Charter of Rights and Freedoms, the Ontario Human Rights Code and the Ontarians with Disabilities Act are statutes which have a bearing on the rights of exceptional students and their families and the legally mandated obligations of school boards in meeting the needs of their exceptional students.

THE *Education Act*, R.S.O. 1990, as amended by Bill 160/97

Subsection 1 (1) Terminology

1.1 Defines exceptional pupil, special education program and special education services

“exceptional pupil” means a pupil whose behavioural, communicational, intellectual, physical or multiple exceptionalities are such that he or she is considered to need placement in a special education program by a committee, established under subparagraph iii or paragraph 5 of subsection 11 (1), of the board,

- (a.) of which the pupil is a resident pupil,*
- (b.) that admits or enrolls the pupil other than pursuant to an agreement with another board for the provision of education, or*
- (c.) to which the cost of education in respect of the pupil is payable by the Minister.*

“special education program” means, in respect of an exceptional pupil, an educational program that is based on and modified by the results of continuous assessment and evaluation and that includes a plan containing specific objectives and an outline of educational services that meets the needs of the exceptional pupil.

“special education services” means facilities and resources, including support personnel and equipment, necessary for developing and implementing a special education program.

Subsection 8 (3): Powers of the Minister of Education

8(3) Outlines the duties of the Minister.

“The Minister shall ensure that all exceptional children in Ontario have available to them, in accordance with this Act and the regulations, appropriate special education programs and special education services without payment of fees by parents or guardians resident in Ontario, and shall provide for the parents or guardians to appeal the appropriateness of the special education placement, and for these purposes the minister shall,

- (a.) require school boards to implement procedures for early and ongoing identification of the learning abilities and needs of pupils, and shall prescribe standards in accordance*

with which such procedures be implemented; and in respect of special education programs and services, define exceptionalities of pupils, and prescribe classes, groups or categories of exceptional pupils, and require boards to employ such definitions or use such prescriptions as established under this clause.

Section 11

Gives authority for the enactment of regulations governing special education programs and services and Identification, Placement and Review Committees (I.P.R.C.s).

Section 13

Provides for the establishment and/or continuation of the Provincial Schools for students who are deaf, blind, deaf-blind and for Provincial Schools for students who have severe learning disabilities.

Section 23

Describes the process for suspending and expelling a student and for appealing suspensions and expulsion.

Section 33

Defines resident pupil.

Section 49.2

Describes services to adults who are identified as exceptional by an IPRC.

Section 57

Provides for the establishment of special education tribunals. Provides for the right to appeal identification and/or placement from an appeal board to a special education tribunal.

Section 57.1

Mandates the establishment of Special Education Advisory Committees. Gives authority for the enactment of regulations relating to the establishment, duties, and mandates of SEACs.

Section 170, paragraph 7: Duties of School Boards

Every board shall provide or enter into an agreement with another board to provide in accordance with the regulations special education programs and special education services for its exceptional pupils.

Section 190

Sets out school board duties with regard to transportation, including transportation to the Provincial residential programs for students who are blind, deaf, deaf-blind or have severe learning disabilities.

Section 266

Provides for the rights of parents and pupils to access pupil records.

Section 266.1

Makes provision for the assignment of Ontario Education Numbers to all students.

Regulation 118

Covers maximum average class sizes for all except special education classes.

Regulation 181

Provides detailed information on the establishment and functioning of Identification, Placement and Review Committees, appeal boards and the duties of school boards with regard to these. The regulation was amended in 2001 by Regulation 137/01, clarifying that it is 30 school days after the start of the placement in which the IEP must now be prepared.

Regulation 296

Covers the operations of the Ontario schools for the blind and deaf.

Regulation 298

Sets out the maximum enrolment in various types of special education classes.
Covers the duties of supervisory officers, principals and professional support staff.
Covers the qualifications of teachers who are placed in charge of a special education class.
Permits a reduction in the length of the instructional program for exceptional students.

Regulation 306

Covers the provision of special education programs and services.
Provides the process for the amendment of each school board's special education plan and the reporting of these amendments to the Ministry of Education.

Regulation 308

Describes the process for Supervised Alternative Learning for Excused Pupils

Regulation 309

Describes the qualifications and duties of supervisory officers

Regulation 464

Sets out the mandates of and procedures for Special Education Advisory Committees

From time to time, the Ministry of Education issues a series of **Policy/Program Memoranda (PPM)**, which describe specific program areas. These are valid until such time as they are revoked or revised. SEAC representatives should be acquainted with these.

| PPM # | PPM Title |
|--------------|--|
| 1 | Ontario School for the Deaf and the Ontario School for the Blind as Resources Centres, April, 1986 |
| 8 | Learning Disabilities, revised 1982 |
| 11 | Early Identification of Children's Learning Needs, revised 1982 |
| 59 | Psychological Testing and Assessment of Pupils, October, 1982 |
| 76C | Alternative Educational Programs and Services for Deaf, Blind and Deaf-Blind Exceptional Pupils, October, 1991 |
| 81 | Provision of Health Support Services in School Settings, July, 1984 |
| 85 | Educational Programs for Pupils in Government-Approved Care and/or Treatment Facilities, 1986 This memorandum must be read together with the memorandum COGA 97-4 Approval of Education Programs in Care, Treatment and Correctional Facilities and with Section 19 of the General Legislative Grant Regulation. January, 1986 |
| 89 | The Residential Demonstration Schools for the Learning Disabled: General Information and Details on the Referral Process, February, 1990 |
| 127 | Provincial Secondary School Literacy Test in English-Language Secondary Schools - Accommodations, Deferrals and Exemptions. September, 2000 |

SEAC representatives should also be aware of the existence of other policy documents governing program and diploma requirements in Ontario schools and establishing standards for special education matters, including Individual Education Plans: Standards for Development, Program Planning and Implementation, 2000 and Standards for School Boards' Special Education Plans, 2000.

The Canadian Charter of Rights and Freedoms, 1982

This is the premier piece of legislation in Canada and is an integral part of the Constitution of Canada. The key items in the Charter with relevance to special education are as follows:

Section 7

“Everyone has the right to life, liberty and security of person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”

Section 15

(1) *“Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national and ethnic origin, colour, religion, sex, age or mental or physical disability.”*

(2) *“Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national and ethnic origin, colour, religion, sex, age or mental or physical disability.”*

Section 24

“Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.”

Section 52

“The Constitution of Canada is the supreme law of Canada and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.”

These sections guarantee all Canadians, who are members of the protected groups listed herein, freedom from discrimination on the grounds of the listed conditions. At the same time, Section 15(2) mandates the right of access to special programs, such as special education, which are expected to ameliorate an innate disadvantage arising from the individual’s membership in one or more of the protected groups.

Ontario Human Rights Code, 1981

The Ontario Human Rights Code is the Provincial companion legislation to the Charter. It is Ontario’s premier legislation. In addition to similar protections from discrimination and the right of access to special programs to address potential and actual discriminatory practices, the Code also guarantees the rights of individuals with disabilities to have their disabilities accommodated, unless such accommodation represents undue hardship for the individual, organization, etc., which has been asked to provide the accommodation. Such accommodations must be provided such that they respect the dignity of the individual with a disability. The onus for proving undue hardship rests with the individual or organization that has been asked to provide the accommodation and not with the person with a disability.

The guidelines for assessing the accommodation needs of persons with disabilities and for providing these without contravening the undue hardship standard have been issued as a separate document under the *Code*. This is called Policy and Guidelines on Disability and the Duty to Accommodate. It was originally released in 1989 and has been revised in 2001. The primary focus of these guidelines is employment. However, the same guidelines have been applied, by default, to education, since education is considered to be one of the service areas to which people with disabilities are guaranteed the right of access.

The extension of these guidelines to education has not been entirely successful. Therefore, currently, in the fall of 2002, the Human Rights Commission is conducting a consultation on the twin topics of education and disability, with a view to releasing a companion policy and guideline document, with specific recommendations for educational settings.

The Ontarians with Disabilities Act, 2001

This legislation is supposed to complement the *Human Rights Code* and offer protection to all persons in Ontario who have a disability. It is of concern that the primary focus of the legislation is physical access, which, although very important, is not adequate to meet the needs of all those who have disabilities, especially in an educational setting. In particular, although the legislation covers school boards, colleges and universities, its components and requirements are minimal in an educational access context. The recently released guidelines for developing Accessibility Plans should be of interest to all SEACs. However, it is of concern that although each organization and institution covered by the Act must develop such a plan, there are no requirements for consulting on the benefits of the plan, for implementing the plan within a predetermined time line or for reporting on the success of the plan in eliminating barriers for persons with disabilities.

School boards may need to be reminded of their obligations under these three pieces of legislation, since they typically tend to focus solely on the *Education Act* and the regulations, when it comes to special education matters. Sometimes, as in the case of IPRCs, they tend to focus just on the Regulations, without considering their obligations under Section 170 of the *Act*. Many exceptional students are denied their rights to accommodation, in spite of the guarantees available to them under the Human Rights Code.

Therefore, members of the SEAC may need to ensure that the school board and SEAC are aware of and respond to the obligations arising from this legislation. Members of SEAC should keep up-to-date about the OHRC and ODA discussions and decisions concerning educational accommodation requirements for students with disabilities.