Elementary and secondary education

Overview

In the 2001-02 school year, over 2 million students attended publicly funded elementary and secondary schools in Ontario.[1] Publicly funded elementary and secondary schools operate under the Ministry of Education (MoE). Ontario has English-language and French-language school systems. These systems have been in operation throughout the province. Currently, there are 72 district school boards in Ontario: 31 English-language public boards, 29 English-language Catholic boards, 4 French-language public boards, and 8 French-language Catholic boards.[2]

Under the Act, the Ministry of Education is responsible for ensuring that all exceptional children in Ontario have available to them appropriate special education programs and services, as required by section 2 of the Act.[3] The Act requires school boards to provide special education programs and services to exceptional students, to identify exceptional students and develop standards for identification procedures.

The Act defines an "exceptional pupil" as one "whose behavioural, communicational, intellectual, physical or multiple exceptionalities are such that he or she is considered to need placement in a special education program."[4]

The Act requires that the MoE and the school boards are required to provide special education programs and services to exceptional students. As part of this requirement, each school board must prepare a special education plan, to be reviewed annually.[5] School boards are also required to establish Identification, Placement and Review Committees (IPRC) to identify students as exceptional.[6]

Under the Charlottes v.with Disabilities Act,[7] the Ministry of Education, as well as school boards, are required to prepare, update and make public accessibility plans outlining their plans to remove and prevent barriers to persons with disabilities in their schools.[8]

In the 2001-02 school year, 176,000 students at the elementary level and 100,700 students at the secondary level received special education programs and/or services in the publicly funded school system.[9]

Since 1998, the public system has been harmed by a combination of government grants and money raised by school boards through local property taxes. In 1998, the provincial government introduced a new funding formula for Ontario's publicly funded school system. Under the new system, school boards no longer have the power to generate revenue through local property taxes to supplement provincial funding for elementary and secondary schools.[10]

Throughout the consultation, stakeholders stressed that many of the problems experienced by students with disabilities in accessing education are due to barriers in the system. The Ontario Human Rights Commission (OHRC) has identified barriers to education for students with disabilities as one of its three educational opportunities confronting students with disabilities.[11]

In 2002, the provincial government commissioned the Expert Panel on Special Education Quality Task Force, chaired by Dr. Mendelson Rosenfeld, to conduct an independent review of the education funding formula. As part of this review, the Task Force examined the current approach to funding special education and concluded that increased funding was required to provide adequate resources to students with special needs. The Task Force recommended that the Ministry of Public Education Advisory Committee on Special Education Funding be established to advise the Minister of Education on the Task Force's Report, or Government Bill.[12]

Students may also receive elementary and secondary education through private schools.[13] Private schools are operated independently and do not receive direct funding from government.[14] In 2001-02, 112,602 students attended private schools in Ontario. Of this number, 5,096 students received special education programs and services.[15]

In addition to the Education Act and its regulations, the Ministry of Education has developed numerous policy statements relating to the delivery of special education. Despite the commitment to provide exceptional students with appropriate programs and services, there are significant barriers to education for students with disabilities. In many cases, stakeholders report that special education practices and procedures in school settings at the local level are not consistent with the Ministry's policy statements and guidelines, and the Education Act and its regulations.[16]

The Ministry of Education has the authority to set its own education policies. At the same time, since the Code may prevail over all other places of legislation in Ontario, the Ontario Human Rights Commission (OHRC) has the authority to interpret and enforce the Code in relation to the Act.[17] The OHRC has the authority to provide a clear policy based system and in private schools have a legal duty to accommodate students with disabilities up to the point of undue hardship.

Access to Education

Barriers to education can take a variety of forms. They can be physical, technological, systemic, financial, or attitudinal. They can arise from an education provider's failure to provide a needed accommodation or from a combination of factors. For example:

In Eldridge v British Columbia (Attorney General), the Supreme Court of Canada found that "since the state does provide a benefit, it is obliged to do so in a manner consistent with the Charter. The Charter requires that the benefit be provided to persons with disabilities in a way that ensures they receive equal benefit from services that are available to persons without disabilities."[18] The Court found that:

It is the Commission's policy position that this comment, while made in the context of health care, applies equally to the provision of educational services. As the Ontario Human Rights Commission (OHRC) has stated, "Ontario's publicly funded education system is obliged to provide equal benefit of services to students with persons with disabilities."[19]

In order for persons with disabilities to receive equal treatment in education, they must have equal access to educational opportunities. The duty to accommodate includes identifying and removing barriers that impede the ability of persons with disabilities to access educational services. The Commission's position is that the duty to accommodate includes providing special education programs and services so as to reduce and remove barriers for persons with disabilities and so that such persons can fully participate in educational programs.

Physical Accessibility

Throughout the consultation, the Commission heard that students with disabilities continue to experience physical barriers to educational services. As stated by the ACOD Coalition: "Students may be unable to attend their local school due to lack of physical accessibility. Many schools are multi-level and the installation of elevators is not a priority. Students who use a wheelchair may be forced to attend a school that is not their first choice. Students who use a wheelchair may be forced to attend a school that is not their first choice. Students who use a wheelchair may be forced to attend a school that is not their first choice."[20]

The Elementary Teachers' Federation of Ontario raised similar concerns: "Ramps, elevators, washrooms, lab and counter tops which are appropriate for students with physical disabilities are not in place. As a result, students with physical disabilities are not able to participate in the school program and fail to participate in school, many existing school buildings must be altered. This may take the form of moving classrooms, building an elevator or perhaps a ramp. Washrooms need to be altered, lab and counter tops need to be lowered, and classrooms need to be made larger to accommodate a wheelchair and other equipment."[21]

It is the Commission's policy position as outlined in the Disability Policy that "when constructing new buildings, undertaking renovations, purchasing new computer systems, launching new Web sites, [or] setting up new policies and procedures – design choices should be made that do not create barriers for persons with disabilities."[22] This approach is consistent with the Ontario Human Rights Code.

Where barriers already exist, the duty to accommodate requires education providers to make changes up to the point of undue hardship to provide equal treatment to persons with disabilities. The Commission's position is that education providers have a duty to make reasonable efforts to remove physical barriers to persons with disabilities in their premises.

The Ontario Building Code (OBC) governs the construction of new buildings and the renovation and maintenance of existing buildings. It has broader close to the Commission that the Ontario Building Code (OBC) and the Ontario Building Code do not always result in equal access to persons with disabilities as required by the Human Rights Code. These exceptions for providing access often rely only on the requirements of the Building Code without due consideration of their consistency with the Human Rights Code. For example, the OBC does not require that all classrooms be accessible to persons with disabilities. Instead, it requires human rights complaints to the extent that their premises continue to fall short of the requirements of the Human Rights Code. Reliance on relevant building codes has been raised as a barrier to accessibility in the education sector. Reliance on the Building Code is not sufficient.

In March 2000, the Commission provided extensive input to the Ministry of Municipal Affairs and Housing on the barrier-free access requirements of the Ontario Building Code. The Commission's recommendations included ways in which the Building Code can incorporate human rights principles and emphasize the need to achieve greater harmonization between the two Codes.

Actions Required:

- (1) That the Ontario Building Code be amended to reflect the legal requirements set out in the Human Rights Code
- (2) That the Minister and Ministry of Public Buildings, Public Works and Services, Ontario Building Code, ensure that its Codes comply with the requirements of the Human Rights Code and the principles outlined in the Disability Policy when constructing buildings, purchasing computer systems and providing services.

Access to Accommodation[28]

Human rights law and policy establish that education providers have a duty to accommodate students with disabilities to the point of undue hardship. Without reasonable accommodation, students are unable to participate in educational opportunities equally.

As previously mentioned, under the Education Act, the Ministry of Education is responsible for ensuring that all exceptional pupils in Ontario have available to them appropriate special education programs and services, as required by section 2 of the Act. Section 2 requires that the Ministry of Education and each school board is required to notify the student's principal of the need to develop an Individual Education Plan ("IEP") for the student.[29] An IEP is a working document that contains the student's learning expectations and the special education program and services that will be provided to meet the needs of the student, and a statement of the methods by which the student's progress will be reviewed. In developing the IEP, the principal is required to consult with the student's parents and, where the student is 16 or 17 years of age, the student. The IEP must be developed within a reasonable time after the student is identified.

During the consultation process, participants described many problems in the IEP process. There were reports of long waiting lists for professional assessments, inadequate resources for IEP implementation, and a lack of accountability for the implementation of the IEP. The Ontario Human Rights Commission Report of the Provincial Advisory Committee on Special Education (1985) contained many recommendations for improving the IEP process, including suggestions for good practice in the Ministry's Individual Education Plan (IEP) Resource Guide (1986).[30] The Commission was told that, as a result of these problems, students with disabilities are not receiving the education they need and are being denied equal access to educational services and benefits.

The Marsha Forest Centre reported: "It is routine that students with disabilities are required to begin school each year after other students do, that some are sent to remain at home with their families for months while their special education needs are being assessed, that students are sent home for days or weeks at a time due to disputes with schools over placement and supports."

The Commission heard many similar complaints. To provide inclusive educational opportunities for children with intellectual disabilities, there must be classroom supports. The special education teacher must be given the tools to get the job done. There is a need for Educational Assistants to provide supports to students that will facilitate their participation in the classroom. Without this, the student is not receiving an education.

In order to have the opportunity to access education equally, students with disabilities may require various forms of accommodation. These accommodations may include: adapted curriculum, adaptive technology, assistive devices, alternative methods of learning, alternative methods of assessment, modified school day, modified school year, and expansion and specialized professional services (psychologists, psychiatrists, social workers, counsellors, educational assistants, speech and language pathologists, etc.). The Commission heard that students with disabilities are not receiving accommodations and that students with disabilities are being denied equal access to education.

Participants in the consultation expressed concerns about the lack of alternative formats available to students with disabilities may interfere with their ability to access education equally. For example, the Canadian Hearing Society stated that students who are deaf or hard of hearing require access to educational materials in alternate versions. In 2000, the Task Force on Access to Information for Print-Disabled Canadians published a report entitled Fulfilling the Promise: Report of the Task Force on Access to Information for Print-Disabled Canadians. The report contained recommendations for improving access to information for the print-disabled community in Canada.[31] Yet, despite this work, consultees reported long waiting periods in the transcription of textbooks, for example, with the result that students with disabilities are not receiving equal access to education.

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teachers are a medium for the transmission of values. It is obvious that the prejudices nature of society and the extent of diversity in Canada are reflected in the school system. Students are exposed to the prejudices of society and the diversity of society in the classroom. Students are also exposed to the prejudices of their teachers. Schools are meant to develop critical thinking and independent reasoning, to educate the environment free of bias, prejudice and intolerance. [42]

Students with disabilities are more likely than students without disabilities to be victims of violence and bullying. Students with disabilities are also victims of sexual assaults. For instance, APC commented: "In our communications with educators we frequently notice that the language they use with students with disabilities reveals certain assumptions, such as students with disabilities are victims of suffers from or suffering from the effects of Speech Language Pathologists and Audiologists suggested that a way to deal with this might be "Partnering schools, students and teachers from diverse school boards to develop a curriculum that would be inclusive of students with disabilities and students without disabilities in the classroom and school environment."

The 2001 Provincial Auditor's Report also found that teacher training in disability issues was inadequate. The Report states "[G]iven that Ministry expects students with special needs to be integrated into regular classrooms, teachers need to be knowledgeable about the various types of disabilities and learning delivery. Nevertheless, at the time of our audit, efforts to ensure that all teachers had this strong foundation were not sufficient." [43] Due to the high demand for teachers, the Report states that "[T]eachers who have little or no training in special education are being hired to teach students with special needs." [44] Teachers without training are ill-equipped to deal with students with special needs.

The certification requirements for teachers in Ontario are undergoing major changes. In June 2001, the provincial government enacted the Statutory and Guidelines of Education Amendment Act (Teaching Profession), which requires teachers to undergo a rigorous program of professional development in order to maintain their licence to teach in publicly funded schools in Ontario. The program was fully implemented in September 2003 and teachers have until 2007 to complete the required professional development. The Act also requires teachers to undergo a police check every five years, seven of which are cross-over. One of the core guidelines is dedicated to the subject of special education. The course includes information on:

- learning disabilities, behavioural disorders, gifted students and other students with special needs;
- students at risk of failing or dropping out for social, economic or emotional reasons;
- students who require special education programs, services or equipment;
- the relationship between equity and equity of outcome;
- the Identification, Placement and Review Committee (IPRC) process;
- the Individual Education Plan (IEP) process;
- planning student transition from school to work or to other programs;
- funding of special education programs.

The course includes "Ontario Ministry of Education Resources" includes a unit on accommodations for assessments. It would appear that this training if conducted appropriately has the potential to better train teachers in the publicly funded school system to deal more effectively with disability issues.

Participants also commented on the lack of training in special education for administrators. Principals are responsible for the delivery of special education and school board safety. The National Federation of the Blind commented: "The presence of more teachers who are blind or vision-impaired would act as role models and would provide a source of information and support for students who are blind or vision-impaired and their families. Unfortunately, this is not the case. Not only must the education system do much more to encourage persons who are blind to consider the teaching profession as a viable career to pursue, it must also encourage sighted teachers to learn Braille and other skills that are needed to teach blind students."

Actions Required:

- (1) That the Ministry of Education monitor its Professional Learning Program to determine its ability to prepare teachers to deal effectively with disability issues and to treat students with disabilities with dignity, respect and sensitivity.
- (2) That the Ministry of Education ensure that its Professional Learning Program is designed to raise student awareness of disability issues and to combat negative attitudes and misconceptions about persons with disabilities.

Labelling

Throughout the consultation, many individuals and organizations voiced concerns about the practice of labelling students with disabilities in the education system. Participants told the Commission that labelling takes place at various stages in the special education system (e.g. the IPRC process). The Connect Support Services for Families stated that "[T]here is a lot of labelling of students with special needs, including labelling students as "behaviour" students."

Labelling of students can result in pre-determining accommodation on the basis of stereotypical assumptions, rather than assessing the individual needs and strengths of each disabled student. Participants told the Commission that labelling students with disabilities is inappropriate because it focuses on what students are unable to do, and is detrimental to students with disabilities in ways that promote participation and are an affront to dignity and individuality.

Participants stated that labelling students with disabilities creates negative stereotypes and misconceptions. Labelling emphasizes should be on assessing and accommodating each person's unique needs and circumstances, rather than resorting to preconceptions or blanket generalizations about persons with a particular disability. At present, the system focuses on what students cannot do. Participants stated that on the contrary, the focus should be on what students are able to do and what they are capable of. Labelling students with disabilities, including their disability-related needs, are overemphasized, and their strengths and contributions are underemphasized.

Participants expressed numerous concerns about the Intensive Support Program ("ISP") funding process and its reliance on pre-set categories for determining funding for students with special needs. The Ontario Public School Boards Association stated: "[T]he ISP process is a top down approach to funding that is delivering special education programs and services to students based on a medical model of disability. The ISP process is creating a two tiered system of funding for school boards receive for of students, including those with special needs. Special Education Grants have 2 components:

1. The Special Education Per Pupil Amount ("SEPPA") is based on a board's total enrolment and is intended to cover the majority of students. This funding is used for special education programs and services that address the full range of exceptionalities.
2. The ISP, which is intended to provide additional funding to support students who require assistance on a board-wide basis. It covers students who require high-cost special equipment, programs and classroom supports.

The Commission heard that the use of these jobbs stereotypes students, fails to consider the individual needs of students, and demeans the dignity and worth of students with disabilities. Participants stated that the use of these labels is inappropriate because it focuses on what students are "unable to do" and "what the needs lists," and are identified more by their disabilities than by their individual characteristics. Concerns expressed concerns that the label prevents the student and creates barriers to the student's ability to learn and participate.

The belief amongst participants that the use of labels is inappropriate because it focuses on what students are unable to do, and what they need, is inconsistent with the Ontario Human Rights Code, which requires that students with disabilities be treated equally with students without disabilities. Participants stated that students with disabilities are discriminated against and treated differently than students without disabilities. Participants stated that students with disabilities are treated differently because they are "different" and are treated differently because they are "different." Students with disabilities are treated differently because they are treated differently because they are treated differently because they

compulsory school age in any of the subjects of the elementary or secondary school courses of study" and that is not operated either by a school board or by the Ministry of Education (s.1). Private schools are required, under the *Education Act*, to submit to the Ministry of Education an annual notice of intention to operate (s.16). The Ministry has the power to require schools to file returns providing statistical information about their enrolment, staff and programs, and to inspect private schools and private school teachers. Other than this, however, the *Education Act* does not apply to private schools. Thus, private schools are not required to implement the IPRC process or to develop and implement IEPs.

[20] As a result of the Equity in Education Tax Credit, announced by the Ontario government in May 2003, private schools will now benefit from public funds as a result of a tax credit.

[21] Information provided by the Ministry of Education.

[22] *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 at paras. 73 and 78.

[23] *Disability Policy*, *supra*, note 5 at Part 4.3.2.

[24] *Ibid*., Part 3.1.3(a).

[25] *Ontario Building Code Act*, S.O. 1992, c. 23.

[26] *See*, *for e.g.*, *Quesnel v. London Educational Health Centre* (1995), 28 C.H.R.R. D/474. (Ont.Bd.Inq.)

[27] The Commission's full submission to the *Building Code* consultation is available on the Commission Website at www.ohrc.on.ca.

[28] The provision of accommodation is covered in this section because it is an issue which can directly limit a student's access to education. In the interest of clarity, it is dealt with separately from the topic of "Appropriate Accommodation" (*i.e.* the assessment of what type of accommodation is most suitable for a student), even though, it is acknowledged, an inappropriate form of accommodation may also limit a student's access to education.

[29] *Supra*, note 14, ss. 6(2).

[30] *Ibid*., ss. 6(6).

[31] Provincial Auditor's *2001 Annual Report, supra*, note 1 at 126.

[32] For more information and the full report, see www.nlc-bnc.ca/accessinfo/s36-200-e.html.

[33] *See* Learning Opportunities Task Force Final Report, pg. 13. The full report is available at www.lotf.ca. The report provides a comprehensive overview of the LOTF's research and pilot projects, and includes key findings and 24 recommendations for enhancing access to education for persons with learning disabilities.

[34] In 1999, the Ministry of Education implemented the Ontario Secondary Schools Literacy Test (the "OSSLT", or "Grade 10 literacy test") to test the reading and writing skills acquired by students up to the end of Grade 9. Passing the OSSLT is a requirement for receiving an Ontario Secondary Schools Diploma. The test is administered through the Education Quality Accountability Office ("EQAO").

[35] Source: Education Quality and Accountability Office, *Ontario Secondary School Literacy Test, February 2002 – Report of Provincial Results*, September 2002, Queen's Printer for Ontario.

[36] Education Quality and Accountability Office, *Guide for Accommodations, Special Provisions, Deferrals and Exemptions*, *Ontario Secondary School Literacy Test*, October 2002.

[37] People for Education describes itself as "a group of parents from public and separate schools in Ontario working together in support of fully publicly-funded education." For more information see: http://www.peopleforeducation.com.

[38] People for Education, *Special Education and the Funding Formula: Emergency Service Only* (October 2002) at 9.

[39] Provincial Auditor's *2001 Annual Report, supra*, note 1 at 151.

[40] *Ibid*., at 135.

[41] *Ibid*., at 136.

[42] *Investing in Public Education*, *supra*, note 18 at 45.

[43] *Ibid*., at 57.

[44] *Special Education and the Funding Formula*, *supra*, note 38.

[45] The Identification, Placement and Review Committee process is covered in the section of this report entitled "Accommodation Process."

[46] The Intensive Support Amount is a component of the Special Education Grants provided by the Ministry of Education to school boards. The Intensive Support Amount is discussed more fully in the section of this report entitled "Labelling."

[47] *Investing in Public Education*, *supra*, note 18 at 47.

[48] Entry into force September 2, 1990, ratified by Canada December 13, 1991.

[49] Proclaimed by the General Assembly, Resolution 3447 (XXX) of December 9, 1975.

[50] *Disability Policy*, *supra*, note 5 at Part 3.4.

[51] The *Safe Schools Act* came into effect in September 2001. It amended the *Education Act* to add Part XIII, "Behaviour, Discipline and Safety." The amendments create a new statutory scheme to govern the suspension and expulsion of pupils. Section 306 of the *Education Act* now provides for mandatory suspension if a pupil commits any of the following infractions: uttering a threat to inflict serious bodily harm on another person; possessing alcohol or illegal drugs; being under the influence of alcohol; swearing at a teacher or at another person in a position of authority; committing an act of vandalism that causes extensive damage to school property at the pupil's school or to property located on the premises of the pupil's school; and, engaging in another activity that, under a policy of the board, is one for which a suspension is mandatory. Section 309 provides for mandatory expulsion if a pupil commits any of the following infractions: possessing a weapon, including possessing a firearm; using a weapon to cause or to threaten bodily harm to another person; committing physical assault on another person that causes bodily harm requiring treatment by a medical practitioner; committing sexual assault; trafficking in weapons or in illegal drugs; committing robbery; giving alcohol to a minor; and engaging in another activity that, under a policy of the board, is one for which expulsion is mandatory.

[52] The circumstances which may constitute "mitigating factors" are prescribed by regulation under the *Education Act*. Section 1 of Regulation 106/01 provides that the suspension of a pupil is not mandatory if the pupil does not have the ability to control his or her behaviour; the pupil does not have the ability to understand the foreseeable consequences of his or her behaviour; or, the pupil's continuing presence in the school does not create an unacceptable risk to the safety or well-being of any person. Section 2 of Regulation 37/01 provides that the expulsion of a pupil is not mandatory if the pupil does not have the ability to control his or her behaviour; the pupil does not have the ability to understand the foreseeable consequences of his or her behaviour; or, the pupil's continuing presence in the school does not create an unacceptable risk to the safety of any person.

[53] Special programs are programs that are designed to relieve hardship, to assist disadvantaged persons or groups to achieve equality, or are likely to contribute to the elimination of the infringement of rights protected under the *Code*. Section 14 of the *Code* allows special programs to be implemented that might otherwise be considered discriminatory under the *Code*. The collection of data by school boards could be considered a special program, if done in accordance with the Commission's *Guidelines on Special Programs*. The *Guidelines* are available online at www.ohrc.on.ca.

[54] *Disability Policy*, *supra*, note 5 at Part 4.2.

[55] The *Code* protects individuals from discrimination and harassment on the basis of sixteen grounds (for example, disability, race, sex, sexual orientation, age, etc.).

[56] The concept of 'intersectionality' has been defined as "intersectional oppression [that] arises out of the combination of various oppressions which, together, produce something unique and distinct from any one form of discrimination standing alone..." M. Eaton, "Patently Confused, Complex Inequality and *Canada v. Mossop*" (1994) 1 Rev. Cons. Stud. 203 at 229.

[57] *An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims* was released in 2001 and is available online at www.ohrc.on.ca.

[58] Provincial Auditor's *2001 Annual Report, supra*, note 1 at 131.

[59] *Special Education and the Funding Formula*, *supra*, note 38 at 4.

[60] *Investing in Public Education*, *supra*, note 18 at 25.

[61] Michael J. Prince, *Governing in an Integrated Fashion: Lessons from the Disability Domain*, Canadian Policy Research Networks (June 2001) at page 48.

[62] *Equal Citizenship for Canadians with Disabilities: The Will to Act*, Federal Task Force on Disability Issues, Ottawa (October 1996) available at http://www.hrdc-drhc.gc.ca/hrib/sdd-dds/odi/documents/taskForce/english/report/.

[63] Prince, *supra*, note 61 at 48.

[64] *Ibid*., at ii.

[65] *Disability Policy*, *supra*, note 5 at Part 3.1.1.

[66] *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 ["*Grismer*"] at para. 2.

[67] *Ontario Human Rights Code*, *supra*, note 3 at ss. 10(3).

[68] See *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City); Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, 2000 SCC 27 (3 May 2000), online: Supreme Court of Canada http://www.lexum.umontreal.ca/csc-scc/en/index.html.

[69] *Robb v. St. Margaret's School*, (2003), CHRR Doc. 03-11, 2003 *BCHRT 4* at para 270.

[70] *Trinity Western University v. British Columbia College of Teachers*, 2001 1 SCC 31, [2001] 1 S.C.R. 772, [39 C.H.R.R. D/357] (Para 13 of on-line QL version).

[71] Provincial Auditor's *2001 Annual Report, supra*, note 1 at 141.

[72] ISA Level 1 provides funds for specialized equipment for individual students with high needs. ISA Levels 2 and 3 provide funds to boards based on the number of students with very high needs, for the provision of specialized programs and services (intensive supports in the classroom). ISA Level 4 provides funds for educational programs offered to children and youth admitted to care, treatment, or correctional facilities. The Special Incidence Portion (SIP) provides funds for staff support for students with extraordinarily high needs to ensure safety in the classroom.

[73] *See* "The Fatal Flaws in Special Education: A Legal Challenge," Mark Handley-Derry, et al. for the Ontario Coalition for Educational Reform, at page 3.

[74] *Disability Policy*, *supra*, note 5 at Part 3.1.2.

[75] In some cases, particularly where there is no dispute about a student's needs, school boards will not require the student to be formally identified through the IPRC process. Even without an IPRC assessment, a student has a right to equal treatment in educational services without discrimination on the basis of disability.

[76] O. Reg. 181/98, *supra*, note 14, s.15.

[77] Regulation 181/98 requires principals to ensure that an IEP is developed for each student who has been identified as "exceptional" by an IPRC within 30 days of the student's placement in a special education program. For a student returning to a special education program, an IEP must be prepared within 30 days of the start of the school year.

[78] Legislative requirements for IEPs are set out in Reg. 181/98 under the *Education Act*. See also the Ministry of Education's policy document *Individual Education Plans: Standards for Development, Program Planning, and Implementation, 2000.*

[79] The Report notes that of the IEPs reviewed, only 17% were completed within the required 30 day period. *See* Provincial Auditor's *2001 Annual Report, supra*, note 1 at 129.

[80] *Ibid*., at 128, 132.

[81] *Ibid*., at 132.

[82] *Ibid*., at 149.

[83] *Ibid*., at 150.

[84] *Disability Policy*, *supra*, note 5 at Part 3.4.

[85] *Ibid*., at Part 3.3.

[86] Eaton v. Brant County Board of Education, [1997] 1 S.C.R. 241.

[87] *Disability Policy*, *supra*, note 5 at Part 3.1.3.

[88] *See* MEDU Memorandum dated June 9, 1994 to directors of education, superintendents of special education, and principals as quoted in Ministry of Education, *Special Education: A Guide for Educators*, 2001 at D10.

[89] O. Reg.181/98, *supra*, note 14, s. 17.

[90] *Ibid*., at ss. 18(2)(c).

[91] Information taken from: http://www.edu.gov.on.ca/eng/general/elemsec/speced/identifi.html.

[92] *Student Focused Funding*, *supra*, note 10 at 3, 5.

[93] *Special Education and the Funding Formula*, *supra*, note 38 at 1.

[94] *Disability Policy*, *supra*, note 5 at Part 3.3.

[95] *Ibid*., at Part 4.2.

[96] *Grismer, supra*, note 66 at para. 41

[97] *Disability Policy*, *supra*, note 5 at Part 4.4.2.

[98] *Ibid*., at Part 4.3.1.

[99] *Concerned Parents for Children with Learning Disabilities Inc. v. Saskatchewan (Minister of Education)*, [1998] S.J. No. 566 at paras. 63-64.

[100] Provincial Auditor's *2001 Annual Report, supra*, note 1 at 127.

[101] *Ibid*., at 135.

[102] *Ibid*., at 149.