

ARCH*ALERT

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New Special Education Regulations Coming into Force September 1, 1998

The Ontario Ministry of Education and Training recently released its new regulations (O. Reg. 181/98) governing the identification and placement of students with disabilities. The new regulations come into force on **September 1, 1998** and contain many important changes affecting the education of students with disabilities. This Arch*Alert highlights some of the most significant changes in the regulations.

Highlights of the New Regulations

The new regulations apply to Identification Placement Review Committees (I.P.R.C.) which decide whether a student with a disability should be identified as exceptional, and if so, what type of special education program they should be placed in. Perhaps the most significant change in the regulations is the new test for special education placements, set out in s. 17, which states:

17. (1) When making a placement decision on a referral under section 14, the committee shall, before considering the option of placement in a special education class, consider whether placement in a regular class, with appropriate special education services,

(a) would meet the pupil's needs; and

(b) is consistent with parental preferences.

(2) If, after considering all of the information obtained by it or submitted to it under section 15 that it considers relevant, the committee is satisfied that placement in a regular class would meet the pupil's needs and is consistent with parental preferences, the committee shall decide in favour of placement in a regular class.

This new test applies to an I.P.R.C. when it makes an initial identification or placement decision, and when it reviews previous I.P.R.C. decisions. Under the old regulations, there was no statutory test to guide an I.P.R.C. or to require a regular class as the preferred placement. Parents and students with disabilities can now rely on s.17 of the regulations in arguing for a regular class placement. If parents can show that a regular class placement will meet their child's needs, the I.P.R.C. must decide in favour of integration. In addition, s. 17 recognizes the need for appropriate supports in order to accommodate students with disabilities in the regular class. This reflects a school board's duty to accommodate under the Ontario Human Rights Code and the Canadian Charter of Rights and Freedoms. If a parent does not want a regular class placement, that preference will be taken up into account by the I.P.R.C. As was the case under the old regulations, a parent still has the right to appeal an identification and/or placement decision made by the I.P.R.C.

Another important change in the new regulations is that a principal must make sure that an Individual

Education Plan (the "I.E.P.") is prepared and regularly updated for students who are placed in a special education program in his or her school. The I.E.P. must include:

- (i) the specific education expectations for the pupil;
- (ii) an outline of the special education program and services to be received by the pupil; and
- (iii) a statement of the methods by which the pupil's progress will be reviewed.

In developing an I.E.P., the principal must consult with parents, and with students who are 16 or older. The principal also must take into consideration any recommendations made by the I.P.R.C. about special education programs and services. This latter requirement reflects the power of the I.P.R.C. to make programming and service recommendations, which it did not have under the previous regulations. The I.E.P. must be completed 30 days after a placement, and a copy must be sent to parents and students 16 or older. The regulations also require an I.E.P. to include transition plans for exceptional students 14 years of age or older, including the possibility of continued placement in a secondary school past the age of twenty-one.

There is one very important issue which the new regulations only partially deal with. When a child with a disability is first enrolled with a school board, for example, when they begin kindergarten, there is no requirement that he or she be placed in a regular class pending the first referral to an I.P.R.C. Therefore, if parents want a regular class placement it is important that they ask for it from the beginning of their child's education, as it may be difficult to change to a regular class once a child has been segregated. However, the new regulations at least provide some protection for parents by setting out requirements for programming, as well as guidelines governing placement, which apply pending an I.P.R.C. decision. These are contained in s.9, which states:

9. (1) In accordance with requirements under the *Education Act*, no pupil is to be denied an education program pending a meeting or decision under this Regulation.

(2) Where an education program is provided to a pupil pending a meeting or decision under this Regulation,

- (a) the program must be appropriate to the pupil's apparent strengths and needs;**
- (b) the placement for the program must be consistent with the principles underlying section 17; and**
- (c) appropriate education services must be provided to meet the pupil's apparent needs.**

There are many other important changes in the regulations including a stronger role for parents and students 16 years of age and older in the I.P.R.C. process, new rules governing the membership of a Special Education Appeal Board, and provisions which allow the I.P.R.C. to consider and make recommendations about special education programs and services. A detailed summary is set out below.

Detailed Summary of the Regulations

1. The First Referral for the Identification and Placement of a Student (section 14)

The process begins with the referral of a child with a disability to an Identification, Placement, and Review Committee. The referral of a student to an I.P.R.C. is often made by the student's principal, with written notice to a parent. However, if a parent submits a written request for an I.P.R.C. hearing, then the principal must make the referral.

Notice to a Parent - section 14(6)

Once a referral to an I.P.R.C. has been made, the principal must, within 15 days of either giving the notice or receiving a request, provide the parents with a copy of the Parents' Guide (a pamphlet which explains the I.P.R.C. process), and a statement of when the principal expects the I.P.R.C. to meet.

The I.P.R.C.'s Response - section 15

An I.P.R.C. that has received a referral must get an educational assessment of the student. Where an I.P.R.C. feels it is necessary in order to make a correct decision about a student's identification and placement, it also must obtain health and psychological assessments. However, an I.P.R.C.'s powers are subject to the *Health Care Consent Act* in obtaining health and psychological assessments. A student can't be forced to have a health or psychological assessment; consent must be obtained. There is no specific age of consent under the *Health Care Consent Act*. Depending on the circumstances, a parent, or the student if he or she is capable of giving consent, may be the appropriate decision-maker.

Interviewing the Student - sections 15(4),(5)

The new regulations give an I.P.R.C. the option of interviewing the student. An I.P.R.C. must have the consent of the parents if the student is less than sixteen years old. If an interview is held, parents have a right to be present at the interview. There is no way for parents to force the I.P.R.C. to meet with their child.

Receiving and Sharing Information - sections 15(6),(7),(8)

An I.P.R.C. must consider all information submitted to it by a parent about their child, or by a student sixteen or older about themselves. However, an I.P.R.C. doesn't have to consider information that is submitted by other parties unless it feels the information is relevant. Therefore, if parents want the reports of experts or advocates to be considered by an I.P.R.C., they should submit the reports themselves. An I.P.R.C. must, as soon as possible after receiving information, provide it to parents and to students sixteen or older.

Matters for Discussion and Recommendation - section 16

One important change in the regulations is that I.P.R.C.'s now have the authority to discuss special education programs and services, and must do so if asked to by a parent or student sixteen or older. Also, an I.P.R.C. can now make recommendations about special education programs, services and supports, although it is not obligated to do so. Finally, an I.P.R.C. can recommend that an exceptional student over the age of 21 stay in a secondary school program. If an I.P.R.C. makes recommendations about these matters, the school board may, but is not required to, follow them. There is no appeal of recommendations.

Preference for Placement in an Integrated Class - section 17

As noted above, one of the most significant changes in the regulations is contained in section 17, which establishes a preference for the placement of exceptional students in a regular class. Before considering a segregated class, an I.P.R.C. must first decide whether a placement in an integrated class, with appropriate special education support services, would meet the needs of the student and be consistent with the wishes of the parents. If a regular class can meet the needs of the student and is consistent with parental preferences, the regulations require the I.P.R.C. to place the student in an integrated class.

2. Statement of Decision - Section 18

As soon as possible after a decision has been made, the I.P.R.C. chair is required to send a written statement of the decision to the parent, to students sixteen or older, and to the principal. The decision must state whether the student has been identified as exceptional or not. If the student is identified as exceptional, the decision must also include:

- * the I.P.R.C.'s description of the student's strengths and needs
- * the categories and definitions of any exceptionalities identified
- * the I.P.R.C.'s recommendations, if any, regarding special education programs and services
- * the I.P.R.C.'s placement decision.

If the committee decides that the student is to be placed in a segregated class, the decision must include the reasons for that placement. This level of detail is a significant change from the old regulations.

After a Decision Has Been Made - section 19

After a placement and identification decision has been made, parents have three options. They can (i) request a meeting with the I.P.R.C. to discuss the decision; (ii) accept the decision and consent to its implementation, or (iii) appeal the decision. If parents do nothing, the decision is automatically implemented after the time limit for appealing has expired. These time limits are set out below. Once a decision is implemented, a parent may request a review of the identification and placement after at least three months have passed, and no more than once every three months thereafter. Parents have the right to request a review even if they consented to the placement.

Requesting a Meeting - section 19(1)

A parent can request a meeting with the I.P.R.C. to discuss their decision by submitting a written request to the principal within 15 days of receiving the decision. The purpose of the meeting is for the I.P.R.C. to explain the reasons for its decision. It also provides parents with an opportunity to ask the I.P.R.C. to change its decision without going through the appeal process.

It should be noted that only parents, not students, have the right to request a meeting. The student may participate in a meeting initiated by a parent, but the regulations do not allow for the student to request a meeting. As soon as possible after the meeting, the I.P.R.C. chair is required to send written notice of any changes, and the reasons for the changes, to the people who received the original decision.

4. Implementation of a Placement Decision - Section 20

The implementation process

A board can only implement a placement decision if a parent consents to it in writing, or the time period for filing an appeal has passed and no appeal has been filed. If a board implements a placement decision without the written consent of a parent, it must notify the parent in writing. If an appeal has been filed by a parent, a board cannot implement the placement decision until the appeal is heard and rejected. At that point, the implementation may be further delayed by an appeal to the Special Education Tribunal. The Tribunal may either allow or dismiss the appeal. The Tribunal's decision is final and binding on both parties.

The Individual Education Plan (I.E.P.) - sections 6, 7, 8

The new regulations require an Individual Education Plan for each exceptional student. The plan is to be developed by the student's principal when a placement decision is being implemented. The I.E.P. must be completed, and a copy sent to parents and to students over sixteen, within 30 days of the implementation of the placement decision. An I.E.P. must be updated following any review of a student's identification or placement by an I.P.R.C. Parents cannot appeal an I.E.P.

In developing an I.E.P., the principal must consult parents and students sixteen or older. The principal also is required to take into consideration any recommendations made by the I.P.R.C. or by a Special Education Tribunal. Under the new regulations, an Individual Education Plan must include:

- * specific educational expectations for the student
- * an outline of the proposed special education program and services to be provided
- * the methods that will be used to measure the student's progress.

5. Transition Plans for Students Fourteen and Older - Section 16(4)

A new requirement in the regulations is for the preparation of a Transition Plan for students fourteen years of age or older, which must be a part of their I.E.P. The Transition Plan must address the student's move from secondary school to further education, employment, or community living. Principals developing Transition Plans are to consult with appropriate community agencies and post-secondary institutions. The transition plan is a component of a student's I.E.P., and therefore parents and students sixteen or older must be consulted.

6. Reviewing a Student's Identification or Placement - Sections 21 to 25

A parent may request a review of their child's identification or placement by submitting a written request to the student's principal, who is then required to refer the student back to an I.P.R.C. A parent can make a request at any time after a placement has been in effect for three months, but no more than once every three months.

A principal also can initiate the review process by giving written notice to a parent. A principal must refer the student to an I.P.R.C. for review at the written request of a board's designated representative. The designated representative of a school board is responsible for ensuring that a review takes place at least once in each school year for each exceptional student, unless the

requirement is waived by an agreement with the student's parents. A "designated representative" is defined in the regulations as either the director of education of the board, or the secretary or equivalent of the board.

The regulations that apply to an I.P.R.C. during the initial identification and placement of a student also apply to reviews. If a parent gives written permission, the I.P.R.C. also will consider the student's progress in achieving the goals in their Individual Education Plan. The statutory test on a placement review is the same as on the initial placement, and is set out in s. 17. Parents have the same appeal rights as well. No change in placement can be made following a review unless a parent consents to it in writing, or the time period for appealing the decision has passed.

Some of the key differences between the new regulations and the old regulations applying to I.P.R.C. reviews are as follows:

- * The old regulations required parents to make a request for a review to the chief executive officer of the student's school board. The new regulations allow requests to be made to the student's principal.
- * A parent's request for a review must be acknowledged in writing by the principal, along with notification of when the I.P.R.C. is expected to meet.
- * Parents and students can take part in discussions at I.P.R.C. meetings, including discussions about programs and services, and can submit information to the I.P.R.C.
- * Other school boards which provide services to the student can now take part in I.P.R.C. discussions.
- * A detailed decision with reasons must be given, and an I.P.R.C. can make recommendations about programs and services.
- * Section 17 sets out a statutory test which an I.P.R.C. must apply in reviewing a student's placement, which includes a preference for an integrated placement.

7. Appealing an I.P.R.C. Decision - Sections 26 to 31

A parent who disagrees with an I.P.R.C.'s decision concerning their child's identification or placement has a right to appeal to a Special Education Appeal Board. A student's placement cannot be changed during the time his or her parents are waiting for the appeal to be heard. A parent's notice of appeal must be filed with the secretary of the school board within a specific time. The time limit for appealing depends on whether or not a parent requested a meeting with the I.P.R.C. to discuss the decision.

If a parent has requested a meeting with the I.P.R.C., the regulations require that a notice of appeal must be filed within 15 days of the date the parents receive notice of the results of the meeting. If no meeting is requested, then a parent's notice of appeal must be filed within 30 days of receiving the I.P.R.C.'s decision. The appeal deadlines are the same following an initial placement decision, and for

reviews of a student's identification and placement.

Appeal Deadlines	Appealing Initial Decision	Appealing Review Decision
Meeting was Held	Appeal must be filed 15 days following receipt of final decision	Appeal must be filed 15 days following receipt of final decision
No Meeting was Held	30 days to file an appeal	30 days to file an appeal

The Notice of Appeal - section 26

A parent's notice of appeal should indicate which parts of the I.P.R.C. decision they disagree with, and why. However, an appeal can't be rejected or refused because a parent's notice of appeal does not explain what parts of the decision they disagree with, or the nature of their disagreement.

The Appeal Board - section 27

The appeal is heard by a Special Education Appeal Board, which is made up of:

- * one member chosen by the school board,
- * one member chosen by the parent
- * a chair chosen jointly by the other two members.

If a chair can't be agreed on, then a District Manager of the Ministry will appoint a chair.

The first two members must be selected within 15 days of the filing of the notice of appeal. The chair must be selected within 15 days of the selection of the second of the two other board members. Appeal Board members cannot have had any involvement with the case under appeal, and can't be employees of the school board or the Ministry of Education and Training.

Under the new regulations, Appeal Boards are more fairly balanced than they were under the old regulations. Parents now have a real choice in selecting a member of the Appeal Board. Also, the joint selection of the board's chair means that there should be a balance between the interests of parents and school boards. The regulations do not allow a student to bring an appeal, or to participate in the Appeal Board selection process.

A Parent's Involvement - section 5

Parents, and students sixteen or older, have the right to attend and participate in all Appeal Board discussions. Parents and students also have the right to representation, meaning that they can have an advocate or a lawyer speak to the Appeal Board on their behalf.

The Appeal Board Chair is required to give 10 days notice of the Appeal Board meeting to a parent, and to students sixteen or older. The meeting is informal, and must occur within 30 days of the selection of the Appeal Board chair. If both a parent and the designated representative of a school board give written consent, the meeting may take place after the 30 day period.

Acquiring Information - sections 27(6) and 28(4)

The chair of the I.P.R.C. whose decision is being appealed must provide the Appeal Board with a record of the I.P.R.C. proceedings, any reports or other documents considered by the I.P.R.C., and

the decision. The chair of the Appeal Board must invite to the meeting any person who, in the chair's opinion, can contribute information.

The Appeal Board Decision - sections 28(6), 29

The Appeal Board may end the meeting when it feels that all relevant opinions, views, and information have been presented. Within 3 days of the meeting, the Appeal Board must make a decision. It can either agree with the I.P.R.C. and recommend that its decision be implemented, or disagree with the I.P.R.C. and make recommendations to the school board regarding the student's identification and placement. The Appeal Board's decision is called a written statement of recommendations.

Appeal Board Statement of Recommendations - section 29

The Appeal Board must send a statement of its recommendations, as well as the reasons for the recommendations, to:

- * the parent of the student, and to the student where the student is sixteen or older
- * the chair of the I.P.R.C. whose decision was being appealed
- * the student's principal
- * the designated representative of the school board

A School Board's Response - section 30

Within 30 days of receiving the Appeal Board's written statement of recommendations, school boards must consider the recommendations and decide what action to take with respect to the student. It then must give written notice of its decision to the people who received the Appeal Board's statement of recommendations. Along with the notice of its decision, a school board must provide parents with an explanation of their right to a further appeal to the Special Education Tribunal.

A school board has a wide range of choices in deciding what action to take after it receives the Appeal Board's written recommendations. The regulations state that the school board is not limited to what the Appeal Board recommended or could have recommended. The school board must, however, advise parents that they can appeal the school board's decision to the Special Education Tribunal. While an appeal to the Tribunal is pending, the school board cannot implement its decision.

8. An Appeal to the Special Education Tribunal

If parents do not agree with the school board's decision following an appeal to the Special Education Appeal Board, they can appeal to the Special Education Tribunal. The school board must explain the process for appealing to the Tribunal in the notice of decision it sends to parents in response to the Appeal Board's statement of recommendations. The Tribunal may either dismiss the appeal, or grant the appeal and order changes to the student's identification or placement. Tribunal decisions are final, and are binding on school boards, parents and students. Parents do not have a right of appeal to the courts, although they can ask the courts to judicially review the Tribunal's decision. This is a complicated process, and if parents want to file a judicial review they should get legal advice from a

private bar lawyer or their local legal aid clinic.

9. Implementing a School Board's Decision - Section 31

If parents choose not to appeal the school board's decision in response to an Appeal Board's recommendations, the decision must be implemented when:

- * A parent consents to the implementation in writing, or
- * the 30 day time period for appeal following receipt of the school board's notice of decision has passed and no appeal to the Special Education has been filed, or
- * an appeal to the Special Education Tribunal has been dismissed or abandoned

The regulations allow parents and school boards to agree to a change of decision by the school board while an appeal to the Tribunal is pending, or before the deadline for appealing to the Tribunal has passed. If there is a change in decision, then the school board must notify all persons who were notified of its original decision regarding the Appeal Board's recommendations.

10. Conclusion

In conclusion, the new regulations create many changes to the I.P.R.C. process, including a very significant change in the test for placement. In addition, the statutory requirement for an Individual Education Plan will force all schools to provide parents with specific information about their child's educational needs and how they will be met. An I.P.R.C.'s ability to make recommendations about programming and services, while not binding on schools, can empower parents in their efforts to have their children's educational needs met, and to obtain accommodation for their children. The requirement for transition plans for students 14 and older will focus attention on long term planning for further education, employment, and community living. The new regulations provide some valuable tools, which parents and advocates can use to meet the educational needs of students with disabilities, and to enforce their rights to equality and accommodation.