# Report to Toronto District School Board Special Education Advisory Committee

From SEAC Chair David Lepofsky for the October 2, 2017 TDSB SEAC Meeting

Date: September 26, 2017

By: David Lepofsky, CM. O.Ont,

 Chair

 Toronto District School Board Special Education Advisory Committee

## 1. Introduction

Our October 2, 2017 SEAC meeting will continue with the work that was in progress at our September 11, 2017 meeting. I will again implement the preference which SEAC members expressed at our September meeting. At our October meeting, the Staff Update will come before our resumption of open time for SEAC members to present their questions on any topic of interest to SEAC staff. That in turn will come before brainstorming for our future priorities.

I am again emphasizing for the benefit of staff that any staff oral report at the meeting should be preceded by a written report, even a short one, that we can read before the meeting. I have asked staff to keep oral presentations quite short so that we can dive right into time for SEAC members' questions, and for discussion. We also encourage staff to assume that we have read their written reports. They don't need to repeat aloud what we've just read in their written reports. Our meeting time together each month is limited. We have a very large committee full of dedicated members who are eager to make a wide range of points. I aim to give SEAC members as much opportunity to voice their ideas and concerns as I can.

All SEAC members, please again take the opportunity via email in advance of our October 2, 2017 SEAC meeting, to raise with Executive Superintendent Uton Robinson any questions you may wish to raise at the meeting, so staff have a chance to prepare detailed answers. For the benefit of one and all, I will offer mine later in this report.

After we finish our discussion of the staff report and of questions for Uton Robinson and the staff, we will proceed to brainstorm our priorities for the next months.

## 2. TDSB's Policy and Procedures on Refusing to Admit Students with Special Education Needs to School

I want to give you heads up on something to be addressed at our November meeting.

At our February 2017 SEAC meeting, we received a troubling report from the ARCH Disability Law Centre about the practice at various school boards, including TDSB, of periodically refusing to admit a student to school, without resorting to the suspension and expulsion procedures, and to the safeguards that go with them.

I circulated a draft motion on this, Motion 6, 1st draft, last March. After that, we received helpful updates from TDSB staff on this at our May and June 2017 meetings. I then made an oral report on this at a meeting before the summer, of TDSB's Program and School Services Committee (PSSC), a committee of the board.

TDSB staff reported to us last spring that TDSB had no policy on this issue and was working on creating procedures. The use of this power across TDSB was not being centrally tracked.

At PSSC, TDSB Director of Education John Malloy reported to trustees that a policy or procedure was being developed.

It would benefit SEAC to know what progress has been made at TDSB on this issue, an important issue that SEAC was responsible for bringing to the attention of senior staff and trustees. It is also a good time for SEAC to go on the record with specific recommendations. Giving recommendations is the core of our mandate.

As such, I have made some modest changes to the earlier draft of Motion #6. Those incorporated feedback that has been raised around the table at earlier SEAC meetings. I am circulating it now, with a view to our considering it at our November 2017 meeting, if time permits I encourage one and all to also share any feedback on the draft Motion #6, via email in advance of our November meeting, that will help us speed up discussion at our meeting.

## 3. Trustees' Reports to SEAC

At several recent meetings, some SEAC members have asked that each of our three trustee members periodically report to SEAC on what they and/or the trustees as a whole are doing that can help advance the supports and services for students with special education needs at TDSB. Because SEAC membership is a voluntary venture for all of us, including our trustee members, as your chair I will take this opportunity to invite and encourage our trustee members to circulate a page or two on this, in advance of our meetings, if their schedule permits. This too will let us use our SEAC meeting time to best advantage.

## 4. My Major Questions for Uton Robinson and TDSB Staff

I anticipate that some or all of these questions, and others that other SEAC members may raise arising from them, can be the subject of a future meeting.

1. Can you let us know what steps have been taken and what progress made to date on the 5 major reform motions SEAC has passed in the past year or so?

2. As our members have made clear in the past, SEAC is eager to be far more engaged in the formulation of the TDSB budget, as it affects students with special education needs. We want to be involved in this as the budget is formulated, and before major decisions are made. In the past, TDSB finance officials have come to TDSB after the fact to report on what the budget includes, that has already been adopted.

For us to have effective input, we need first to have a full, clear understanding of how money is spent on meeting the needs of students with special education needs, whether in the regular classroom or in a special education classroom. It would also be very helpful for us to get a good understanding of who, on the TDSB hierarchy, is making the key decisions.

On this subject, the TDSB's Special Education Plan is, unfortunately, impenetrable. It gives a blizzard of information which does not let us get a clear picture on the questions on which we need help.

a). How many front line staff are there at TDSB to provide added supports to students with special education needs, beyond the frontline teacher in the regular classroom? Broken down as special education teachers, special needs assistants, education assistants or others?

b) How are these additional staff assigned out among the 550 school at TDSB each school year? Who divides them up and assigns them?

Put another way, if a family has a student with special education needs, and they are going to a particular school, how is it decided how many special education teachers, SNA's, EA's etc. are to be located at that school?

c) We have informally heard that it is the school principal who decides how to divvy up the time of the added special education staff such as SNAs in that school, among the students with special education needs at that school.

Is this so? If so, what instructions or guidelines are assigned to the principal when making these decisions? To whom does the principal account? How does the TDSB senior staff track whether this is being done optimally? It would be important to know what is done to ensure that there are not different practices from school to school.

d) If a principal has more demand for additional special education staff support than has been allocated, what can they do about it? To whom do they make their request? What flexibility is in the staffing allocation to allow for this? How is this tracked? How is the accountability on this addressed?

e) If a principal has told a family that there is not enough special education staff support to meet the needs of a student with special education needs, to whom can they address their request to get more special education staff supports allocated to that school?

f) As I understand it (and please correct me if I am wrong), TDSB does not specifically assign a specific special education staff support person to a specific student. If during the school year, or between school years, that student moves to another TDSB school, they don't carry that assignment of staff support with them. The student and their family must make their case for the same support again. It would be helpful to know if this is so, and if so, what can be done to change this to avoid each school and each family having to re-invent the wheel?

I anticipate that other SEAC members will have questions on this topic.

## 5. My Feedback on TDSB's Draft Policy on the Use of Service Animals at TDSB

At my request, TDSB staff last month shared with us TDSB's draft guideline on the use of service animals at school. It was included in TDSB's staff report last month. I set it out again, below.

At our September meeting I commended TDSB for being more open to allowing service animals than is the Waterloo District Catholic School Board. That board fought against a student who wanted to bring his autism service dog to school. We were told that this draft TDSB guideline is the guideline which TDSB is now following.

At the end of this report, I also set out an analysis of the very troubling ruling by the Human Rights Tribunal of Ontario on the Waterloo case, which I wrote, and which was made public in a recent AODA Alliance Update.

Having had more time to review the TDSB draft guidelines, I offer these thoughts on my own behalf. One and all are encouraged to express your own feedback to TDSB via email in advance of our October SEAC meeting, if you wish.

* For the reasons set out in my analysis of the Human Rights Tribunal ruling below, TDSB should not view that ruling as cutting back on the right of students with disabilities to the accommodation of a service animal at school. Happily, I have heard nothing from anyone at TDSB to suggest that there is any move to reduce the rights of students with disabilities at TDSB in this regard.
* TDSB's draft guideline requires a student or employee with a disability to re-apply every school year for permission to bring their service animal to school. This makes little sense. If their disability is permanent, they should remain entitled to use their service animal unless TDSB can show that they no longer need it.
* The draft policy refers to some accreditation of the organization providing the animal's training. While that accreditation can be helpful, it should not be mandatory. I cannot myself say that the certifying or accrediting bodies to which the draft policy refers are appropriate, and that any other training organization would not be acceptable. Recently, the Federal Government has considered adopting new rules on accrediting the training of service animals. Those draft accrediting standards have been widely criticized by guide dog users here and abroad.
* People with disabilities using a service animal have a right under the Ontario Human Rights Code to bring them to private places, and not just public places, with them. Even if a school were not considered to be a public place, a denial of access due to the fact that a person has a service animal would give rise to human rights concerns.
* The draft guidelines say a TDSB employee can have a service animal at work if it is "necessary" to do the job's essential duties. It also uses the "necessary" test for a student with a disability bringing a service animal to school. This "necessary" term should be removed. Building on my analysis of the Human Rights Tribunal ruling, below, a blind TDSB employee should not be denied the right to bring a guide dog to work on grounds that it is not "necessary", on the basis that this person could navigate using a white cane.
* The draft framework states, regarding loading and off-loading at a school bus:

*"The parent/guardian/support person will be responsible for loading/unloading of the service animal."*

I hope this does not mean that the parent must go to school and be there to off-load the service animal from the bus at school every day. This should be clarified.

* The draft framework recites some provisions in accessibility standards under the Accessibility for Ontarians with Disabilities Act regarding service animals. While these are helpful, they do not override any broader protections for people with disabilities using service animals in the Ontario Human Rights Code.

## 6. TDSB Screening Test for giftedness and Some Other Conditions

At our September 11, 2017 SEAC meeting, a staff presentation on the screening test for giftedness and some other conditions raised the issue of when TDSB would give a student a longer time to take the test. We were told that this accommodation would be conditional on a student having an Individual Education Plan (IEP) but it was of course not suggested that every student with an IEP would get such a time extension.

I want to add some thoughts to the concerns which SEAC members raised at the meeting, with any precondition that the student must already have an IEP to get this accommodation. This is because:

Under Ontario's outdated special education legislation, an IEP is only mandated with students with a condition defined as an "exceptionality". These do not include all disabilities, as protected under the Ontario Human Rights Code and the Canadian Charter of Rights and Freedoms. If a student has a disability that needs this accommodation, but his or her disability does not fall within the outdated special education definition of exceptionality, this policy unfairly and arbitrarily leaves that student out in the cold. To me, that makes no sense.

As well, this precondition puts the cart before the horse. The whole reason for this screening is to catch students who may need education accommodations, but who have not yet been identified as needing them. To limit this testing accommodation to students whom TDSB has already recognized as needing an IEP seems to fly in the face of the purpose for this testing.

Finally, just because a student has an IEP doesn't mean that the need for this testing accommodation will be identified in that IEP.

As such, speaking for myself, I'd recommend that TDSB drop any precondition during that testing that a time extension is only available to a student who already has an IEP.

## 7. Ontario's Human Rights Tribunal Bungles the Human Rights Duty of Schoolboards to Accommodate Students with Disabilities -- A Preliminary Analysis of the Human Rights Tribunal's ruling on a Student's Request to Bring His Autism Service Dog to School

Originally posted in the September 25, 2017 AODA Alliance Update at:

<http://www.aodaalliance.org/strong-effective-aoda/09252017.asp>

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The widely-publicized and controversial August 30, 2017 Human Rights Tribunal's ruling in J.F. v. Waterloo District Catholic School Board is seriously flawed and troubling. That case rejected the claim by a nine-year-old boy with autism spectrum disorder that the Waterloo District Catholic School Board violated his right to equal treatment in education under the Ontario Human Rights Code. The school board had refused to allow the boy to have his trained autism service dog with him at school, to help him self-regulate his emotions and behaviours, in order to be able to better learn in school, despite the difficulties that autism spectrum disorder can cause.

This decision embodies an abject failure by both the Waterloo District Catholic School Board and the Human Rights Tribunal to properly apply human rights principles to a vulnerable student with an undisputed disability. This case painfully illustrates the serious and unfair disability accessibility barriers that students with disabilities too often still face in Ontario's education system. It shows how families are unfairly required to repeatedly fight against the same barriers, at school board after school board. This case also exemplifies a serious flaw in Ontario's current system for enforcing human rights, a new system that the Ontario Government established a decade ago over the strong objections of many from Ontario’s disability community. It shows why Ontario must enact a strong and effective Education Accessibility Standard under the Accessibility for Ontarians with Disabilities Act, to remove recurring disability accessibility barriers such as this in Ontario's education system.

Here are just some of the problems with this Human Rights Tribunal decision.

**School Board Did Inadequate Job of Exploring Solutions**

The Human Rights Tribunal erroneously ruled that the school board had done enough in this case to fulfil its duty under the Ontario Human Rights Code, to investigate solutions, once it received the family's credible request for a disability-related accommodation. Yet from the Tribunal's reasons, there is no indication that the school board had taken several obvious, easy steps to investigate this issue. The school board had the burden to prove that it took all the needed steps to investigate this accommodation request, and that any further investigative steps would have caused the school board "undue hardship.” That is a tough test for a well-resourced publicly-funded school board to meet.

The school board's human rights duty to investigate solutions is especially important, since this bears on the right to equal treatment in education for students with disabilities. This is a constitutional right which s. 15 of the Canadian Charter of Rights and Freedoms guarantees. It is also a quasi-constitutional right which the Ontario Human Rights Code guarantees. Students with disabilities are a historically vulnerable and disadvantaged group in society. Our education system has historically been designed in a way that fails to sufficiently take into account the accessibility needs of students with disabilities.

There were transparently obvious additional steps that the school board could and should have taken. The Tribunal decision does not even consider these steps. The Tribunal certainly did not make any findings that these steps were pointless or that they would have caused the school board undue hardship to even try.

First, there is no indication in the Tribunal reasons that the school board ever tried a trial run, by letting the student have his autism service dog school, even for a short trial period such as a day or two. There was no evidence recited in the ruling nor any finding that conducting a trial period, even a short one, would impose an undue hardship on the school board. If the school board was uncertain that the autism service dog would assist the student, a trial period was an obvious way to test this. A trial period was especially important because there is no suggestion that the school board, and especially any of its officials who dealt with this accommodation request, had any prior hands-on experience with, or expertise in, the benefits that an autism service dog can provide, in the school setting or elsewhere.

Second, there is no suggestion in the Tribunal’s reasons that anyone at the Waterloo Catholic School board took any steps to visit and observe the boy, using his autism service dog, outside of school. If the school board was skeptical that the autism service dog could help improve the boy’s learning, it would obviously have benefitted from seeing the impact that the autism service dog had on the boy’s behaviour. Visiting the family at a time and place where the student was using his autism service dog would certainly cause no undue hardship to the school board.

Third, the school board appears to have challenged the evidence of witnesses testifying at the human rights hearing on behalf of the student, on the basis that the boy’s witnesses had not observed the student functioning in his school class. The school board appears to have called into doubt the views of the family and their witnesses, on the need for the autism service dog at school, on the grounds that none of those witnesses against the school board had seen how the boy was behaving at school. Yet there is no indication that the school board invited the family or their witnesses to observe the boy in class for this purpose.

This obvious way to work towards a collaborative solution would also have afforded the family to point out aspects of the boy’s behaviours at school which the school board officials may have missed. School boards regularly tell parents of students with disabilities that the parents are the best experts in their child’s needs. What possible hardship could it cause the school board to take this simple step?

Fourth, the Tribunal's reasons show that some school board officials were unconvinced that the student would benefit from having the autism service dog with him at school. According to the Tribunal decision, some school board officials even speculated (without any expertise or experience on which to base their views) that the presence of the autism service dog at school could set the boy’s progress back.

In these circumstances, the school board's duty under the Ontario Human Rights Code to investigate solutions includes a duty to reach out to other school boards that have allowed students with autism to bring an autism service dog to school. The Waterloo District Catholic School Board could thereby find out how it worked out at other school boards. Yet there is no indication in the reasons that the school board took any steps to find out about the experience at some other Ontario school boards that allow students with autism to bring their autism service dog to school.

It is perplexing and puzzling that the Tribunal's reasons reveal no exploration of evidence before the tribunal about the undisputed fact that there are other school boards in Ontario that have allowed students with autism to bring their autism service dog to school. The Tribunal said this about the evidence of an official from the Lions Foundation, who testified for the family:

"He stated that since 2008, the Lions Foundation has placed over 300 dogs across Canada from the autism program. Of the 300, there are about 280 who are currently active and of those, he knows of 60 who attend school with the student with a disability."

Over three years ago, on [February 3, 2014](http://www.aodaalliance.org/strong-effective-aoda/02182014.asp). The Toronto Star published a detailed article on the fact that some Ontario school boards allow autism service dog at school. This article is set out below. If other school boards can accommodate a student with autism, bringing an autism service dog to school, then the Waterloo Catholic School Board should equally be able to do so. This school board would have quite a hefty burden to prove the contrary. Nothing in the Tribunal's reasons (including its detailed review of the evidence) suggests that the Waterloo Catholic School Board was in some difficult position, compared to other school boards in Ontario.

In 2017, it is seriously troubling that any school board officials would paternalistically claim to know better than the student, his parents, or those who train and work with autism service dogs, about the possibility that the service dog's presence at school would be harmful for the student, especially when those school board officials did not take such simple steps as finding out about the experience of other school boards that allow an autism service dog to come to school, observing the boy working with the autism service dog outside of school, and/or inviting the family to observe the boy in school.

**Wrong to Conclude that the Boy didn’t Even Need His Autism Service Animal at School**

The Tribunal also erroneously rejected this human rights claim because it was not persuaded that the school board's refusal to allow this boy to benefit from his autism service dog at school had a negative impact on him because of his disability. In plain language, the school board argued that the boy didn’t need his autism service dog at school. The Tribunal in substance agreed.

Yet the Tribunal reasons show that the student, while making progress at school, still had needs arising from his autism, even if he was making positive progress at school. There is no suggestion that the school board proved that the autism service dog would never and could never assist the student in any way, or that the boy’s autism could create no need under any circumstances for self-regulation, in order for the boy to fully benefit from the education to which the student was entitled.

The Tribunal erroneously set the bar far too low when it assessed the goal of education accommodation in this case. That approach would be harmful for students with disabilities more generally.

The Tribunal's decision, evidently drawing upon the school board's argument, found against the student in part because he was getting acceptable grades, was doing well and was making progress at school. This might at first seem sensible. Yet on a closer look, it unfairly dilutes the student's human rights entitlement to classroom accommodation.

The student was entitled under the Human Rights Code (as well as under the Charter of Rights) to any accommodation that would enable him to learn to his potential. Even if he was happy, was progressing and was getting decent grades, the addition of his autism service dog could have helped him do better at school. The aim of education in Ontario is to learn and grow to a student's individual potential. It is not merely to be happy, to make progress or to achieve some average or baseline.

The school board's approach to this student's disability accommodation, which the Tribunal in effect reaffirmed and certainly did not reject, also reflects a troubling paternalistic approach to the duty to accommodate people with disabilities. From the reasons, it appears that the school board or its key officials took the view that if anything, the student's autism service dog could set the student's progress back at school, in terms of his developing independence.

To be faithful to human rights principles, the Tribunal should have viewed such a claim with great caution and skepticism. Of course, a school board is not obliged to automatically accept any form of accommodation that a person with a disability proposes. The school board is entitled to assess the accommodation request.

However, properly applied, human rights principles should require an organization such as a school board to show some respect and deference to the individual with a disability, here the student and his family, regarding the appropriateness of an accommodation. The family has invested the time and effort to select the accommodation of a trained autism service dog, to meet the student's undisputed need to self-regulate his emotional and behavioural responses to different situations. The service animal was obtained through an organization with extensive experience with autism service dogs. A school board should be reluctant about thinking it knows better, whether that accommodation is helpful.

A school board would not be viewed as being sensitive to a student's needs if it concluded: "You don't need those eyeglasses or that computer screen text enlarging software, in order to read. Glasses or special adaptive software are a form of dependency that you should avoid. We'll instead give you large print books and documents, and that is enough to meet your needs."

The risk of paternalistic stereotyping is manifest in the area of service animals. For example, decades of experience show that guide dogs can play an important role in enabling people with vision loss to be independently mobile. Of course, there is ample experience to show that people with vision loss (including myself,) can also be quite independent when trained to use a white cane. It would be an appalling violation of the Ontario Human Rights Code for a school board to tell a blind person that they cannot bring their trained guide dog to school, because blind people can manage just fine with a white cane. Indeed, one stereotype about guide dogs for people with vision loss is that they lead their owner to lack independence, because they depend on a dog. The paternalistic stereotype towards autism service dog emanating from the school board in this case, and to which the Tribunal erroneously gave an inappropriate free pass, appears quite similar.

**Pressing Need to Fix Serious Problems in How Human Rights Are Enforced in Ontario since 2006**

This case illustrates the fundamental and crushing unfairness in Ontario's overall system for enforcing human rights. This has been the case in Ontario since controversial reforms to human rights enforcement were enacted in 2006.

The Ontario Human Rights Code unfairly left it to this boy’s family to privately hire and pay their own lawyer, to investigate the evidence, and prosecute this case at the Human Rights Tribunal. This was a seven-day hearing before the Tribunal. No doubt it also involved pre-hearing meetings or other processes, formal or informal. The cost to a family of hiring a private lawyer for such an extensive proceeding can be huge.

Making this worse, this family was up against the large and publicly-funded Waterloo Catholic School Board. The school board, unlike the student, had access to the public’s deep pockets to hire private lawyers, in order to wage a long and hard legal battle against the student and his family. This is not a fair fight. It leans heavily in favour of school boards, themselves government agencies, and against vulnerable and disadvantaged students with disabilities.

Ontario's system for protecting and enforcing human rights was not always like this. In 2006, the Ontario Government made major changes to the enforcement of the Ontario Human Rights Code. Many in the disability community, and among other equality seeking groups, strenuously opposed those changes, including the AODA Alliance. Our objections were ignored by the Ontario Government. In an extraordinary move, the Ontario Government even used its majority in the Legislature in November 2006 to [invoke closure](http://www.aodaalliance.org/reform/update-112306.asp), in order to cancel further upcoming legislative hearings at which these reforms were expected to be widely criticized. The AODA Alliance was one of the many organizations whose chance to present to those legislative hearings were cancelled as a result.

Before those 2006 changes to human rights enforcement, this family would have filed this human rights complaint with the Ontario Human Rights Commission. Back then, the Commission was a public law enforcement agency with the mandate to investigate, publicly prosecute and enforce such human rights cases. The Commission would have had the duty to publicly investigate this case and to try to mediate a settlement. If the case did not settle, and the evidence warranted a hearing (which is obviously the case here), the commission would have had the mandate to itself take this case to the Human Rights Tribunal, to publicly prosecute it.

Under the pre-2006 Ontario Human Rights Code, once a case got to the Human Rights Tribunal, the Ontario Human Rights Commission had carriage of the case at the Human Rights Tribunal. It investigated the facts, presented the evidence, cross-examined the school board's witnesses and argued the case. It was represented by lawyers with expertise in human rights, paid for by the public. Back in those years, the family would not have had to hire a lawyer. Yet the family also had the right to attend the Human Rights Tribunal hearing, to also have a lawyer, and to present its own evidence, if it did not think the Commission was making all the points that needed to be made. Especially important here, the family would not have had to hire its own lawyer in order for this case to be effectively presented to the Human Rights Tribunal.

It is especially important in a case like this for the Human Rights Commission to be front and center at a Human Rights Tribunal hearing. This case clearly had obvious, sweeping public importance for others, including other students with disabilities. Having the Ontario Human Rights Commission at this Tribunal hearing, leading or at least helping with its prosecution, is all the more important when this young boy is up against the might of a publicly-funded school board.

Ontario’s new human rights enforcement system let down this family, and more generally, students with disabilities, in four major ways. First, when the Ontario Government privatized the enforcement of human rights in Ontario passed in 2006, the Government had [promised](http://www.aodaalliance.org/reform/update-081806.asp) it would provide free publicly-funded counsel to all human rights applicants from the beginning of the Human Rights Tribunal process to the end. That promise [has been broken](http://www.aodaalliance.org/docs/march%201%202012%20entire%20final%20aoda%20alliance%20brief%20to%20andrew%20pinto%20human%20rights%20code%20review.doc) over and over since then.

A decade ago, the Ontario Government created the Ontario Human Rights Legal Support Centre, to advise and represent human rights applicants. However, that Centre is not funded sufficiently to enable it to serve all human rights applicants.

Second, even though Bill 107 privatized human rights enforcement, and took away the vast majority of the Ontario Human Rights Commission's enforcement powers and duties, it left the Commission with the power to intervene in individual cases at the Human Rights Tribunal. From the Tribunal's reasons in this case, there is no suggestion that the Commission exercised its rights to do so in this case. Since the enactment of Bill 107, the Commission has been properly criticized for not making fuller use of that power.

In this case, the Ontario Human Rights Commission profoundly let down students with disabilities. It should have intervened in this case and taken active part in the presentation of evidence and arguments, to address such glaring systemic discrimination. A decade ago, when the Ontario Government privatized human rights enforcement, it promised Ontarians that under it, the commission would be a stronger force in the battle against systemic discrimination. This case illustrates that the opposite has come true.

Over the past decade since it lost its major enforcement mandate and powers, the Human Rights Commission has invested much of its time and effort in developing policies on human rights issues, making public statements, and trying to raise awareness about human rights. We in the disability accessibility movement know only too well that policy statements and raising awareness, if not backed by effective enforcement, is incapable of bringing about the changes we need. Great policy statements on human rights mean far too little, when organizations, including school boards, can dig into the public purse and fund lawyers to vigourously oppose claims like those in this case.

Third, under the new approach to enforcing human rights, Ontarians were promised that the Human Rights Tribunal would take a more modern and activist approach to dispute resolution, practicing "active adjudication.” There is no indication that the Tribunal did so here. Rather than offsetting the incredible imbalance of power between the student and his family on the one hand, and the school board on the other, the Tribunal's reasons leave critical and obvious issues uncanvassed such as those identified above – issues that should have led to a very different outcome.

Fourth, this young boy and his family faced a cruel choice after this seriously flawed human rights ruling. In theory, they have the right to seek judicial review of the decision in the Superior Court of Ontario, if they can prove that the Tribunal's errors are so serious that they justify the court in overturning the ruling. This is a high threshold to meet. I do not here comment on whether a judicial review application should be pursued.

However, if the family went to court, it would face a new and unfair financial risk under Ontario's post-2006 human rights legislation. The family would have to pile up more legal fees, paying their private lawyer to prepare and argue the court case. They also face the risk that if they lose in court, the court could and quite likely would order the family to pay the school board's legal costs for the court review. For this family, this adds up to many more thousands of dollars.

In sharp contrast, before 2006, had the Ontario Human Rights Commission presented this case at the Tribunal and lost, it could bring the case to court for an appeal. The Commission would pay its own lawyers. The family would not have to hire and pay lawyers at all, if it did not wish to do so. If the Commission lost in court, it would be the Commission, and not the family, that would have to pay the school board's court-related legal fees.

As such, the Ontario Government has created a new and serious financial barrier to access to justice for discrimination victims, which this case typifies.

**Concluding Thoughts**

It is important to emphasize what this Human Rights Tribunal decision did *not* decide or rule upon. It did *not decide that it would cause an undue hardship for that school board to allow this boy to have his autism service dog with him at school. It did not decide that the school board could not accommodate the boy and his autism service dog at school. It did not decide as a general matter that school boards in Ontario do not need to accommodate students with autism by allowing them to bring an autism service dog to school.*

*All the Tribunal here decided, rightly or wrongly, was that on the specific evidence that the family presented, the family had not shown that this boy was disadvantaged in his educational opportunity by this school board's refusal to allow him to bring his autism service dog to school with him. Indeed, if the same family brought the same request again, on better evidence, and/or if additional arguments were presented on the boy's behalf, the school board would be required to reconsider this request afresh. The school board could not just point to this Tribunal ruling as a once-and-for-all declaration that an autism service dog never has any place in an Ontario school, whether for this boy or for any other students with disabilities. If the school board again refused, it would be open to the Human Rights Tribunal to reconsider the entire issue afresh. Hopefully, the next time, the Ontario Human Rights Commission would step up to the plate, as it should have here.*

One of this case's tragedies is this: Had this school board redirected just a fraction of the time, effort and public money towards trying to work out a way to let this student bring his autism service dog to school that it instead used to fight against this boy, the great likelihood is that a far more positive outcome would have been reached. Instead, the school board acted like a rigid public sector bureaucracy that resists change, and that has access to the public purse to tenaciously defend its actions.

This case also shows why there is a pressing need for the Ontario Government to enact a strong Education Accessibility Standard under the Accessibility for Ontarians with Disabilities Act. That accessibility standard should include strong protections for students with disabilities, like the student in this case, who want to bring a trained service animal to school. Students and their families should not have to fight against these disability accessibility barriers one school board at a time.

The opportunity remains for the Waterloo Catholic School Board's elected trustees to take the high road, and to now do the right thing. Those trustees might wish to consider that Leviticus 19:14 sets out the world's earliest law against discriminating against people with disabilities. "You shall not curse a deaf person or place an obstacle in the path of a blind person." The Waterloo Catholic School Board should apply that principle to this situation.

Note: The assistance of AODA Alliance supporter and volunteer, Emily Lewsen, with background checking for this analysis, is gratefully acknowledged.

## 8. TDSB Draft Guideline on Service Animals at TDSB Schools

 **Draft Guidelines for the Use of Service Animals within the Toronto District School Board (TDSB)**

**Part 1: General Information**

1. **Purpose:**

These guidelines have been developed in accordance with PR 549 Animals in Classrooms, PR 604 Use of Service Animals by the General Public, and Workplace Accommodation Procedures for Employees with Disabilities and the Protocol for Entry of Assistance Dogs into the Toronto District School Board (TDSB).

The use of a specifically trained service animal is **one strategy** used to accommodate the needs of individuals with special needs as listed below. These guidelines provide direction regarding the admittance and implementation of the use of service animals in the school/work environment. The individual(s) making the request for a service animal must follow these guidelines **on a yearly basis as approval** for the use of a service animal as an accommodation must be renewed at the beginning of each school year not a calendar year.

Service animals are trained to provide a wide range of assistance for personal health reasons including matters related to: vision, hearing, mobility, diabetes, seizures and mental health as well as providing support for individuals diagnosed with Autism Spectrum Disorder.

In October 2016, the TDSB Board of Trustees approved the “Integrated Equity Framework Action Plan”. This framework guides the TDSB’s strategic efforts by ensuring the ongoing alignment of the TDSB operations and organizational culture, with goal of improving achievement and well-being outcomes for all our students

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 “We believe that equity of opportunity and equity of access to our programs, services and resources are critical to the achievement for all those whom we serve, and for those who serve our school system… The TDSB is therefore committed to ensuring that fairness; equity and inclusion are essential principles of our school system and are integrated into all our policies, programs, operational practices.” *(TDSB Equity Foundation Statement)*

These guidelines are also in alignment with this framework.

1. **Definitions**

There are 2 recognized groups of trained service animals to accommodate the needs of individuals with special needs.

These include:

1. **Guide Dog:**

Effective July 1, 2016, Accessibility Standards for Customer Service, Ontario Regulation 429/07 is now part of the Ontario Regulation 191/11: Integrated Accessibility Standards Act which refers to the definition of a guide dog.

The Ontario Regulation 191/11: Integrated Accessibility Standards Act, Part IV.2, Subsection 80.45 (3) states; “A Guide dog” means a guide dog and is defined in Section1 of the Blind Persons’ Act Rights Act which states a “guide dog” means a dog trained as a guide for a blind person and has the qualifications prescribed by the regulations.

1. **Service Animal/Assistance Dog/Emotional Support Dog:**

The Ontario Regulation 191/11: Integrated Accessibility Standards Act, Part IV.2, defines a service animal in Subsection 80.45(3) which states in:

Section 4: For the purposes of this Part, an animal is a service animal for a person with a disability;

1. If the animal can be readily identified as one that is being used by the person for reasons relating to the person’s disability, as a result of visual indicators such as the vest or harness worn by the animal: or
2. If the person provides documentation from one of the following **regulated health professionals** confirming that the person requires the service animal for reasons relating to the disability:
* A member of the College of Audiologists and Speech- Language Pathologists of Ontario
* A member of the College of Chiropractors of Ontario
* A member of the College of Nurses of Ontario
* A member of the College of Occupational Therapists of Ontario
* A member of the College of Optometrists of Ontario
* A member of the College of Physicians and Surgeons of Ontario
* A member of the College of Physiotherapists of Ontario
* A member of the College of Psychologists of Ontario
* A member of the College of Registered Psychotherapists and Mental Health Therapists of Ontario. (Ontario Regulation 165/16, s. 16)
1. **Under Subsection 80.47 - Use of Service Animals and Support Persons:**

Section 3: If a person with a disability is accompanied by a guide dog or other service animal, the provider shall ensure that the person is permitted to enter the premises with the animal and to keep the animal with him or her, unless the animal is otherwise excluded by law from the premises. (Ontario Reg. 165/16, s. 16)

Section 4: If a service animal is excluded by law from the premises, the provider shall ensure that other measures are available to enable the person with a disability to obtain, use or benefit from the provider’s goods, services or facilities. (Ontario Reg. 165/16, s. 16)

**For the purpose of these TDSB guidelines, all trained service animals will now be referred to as “service animals” which includes the category of guide dogs described above.**

1. **Background Information and General Information:**
	1. These guidelines outline the procedure for the use of “service animals” within the TDSB. A service animal performs specific tasks related a person’s specific disability and people are often issued a public access card.

* 1. The Integrated Accessibility Standards, Ontario Regulation 191/11 section 75 (1): and The Ontario Human Rights Code (OHRC) provides the authority for service animals to accompany their handlers in all public places including schools and buses.
* Service Animals and their handlers receive specialized training to work together and consequently these animals should present minimal risk to, or impact on, other people.
* All service animals adhere to the Minimum Standards for Training Service Dogs as outlined by Assistance Dogs International (ADI). ADI is a coalition of non-profit organizations that train and place service animals specifically dogs. The purpose of ADI is to improve the areas of training, placement and utilization of service animals and to provide staff and volunteer education.

For further information visit:

[www.assistancedogsinternational.org/Standards/ServiceDogStandards.php](http://www.assistancedogsinternational.org/Standards/ServiceDogStandards.php)

* 1. The term “handler” refers to the person for whom the animal is provided. The responsibility, the care of the service animal and the handling routines of the service animal rest solely with the handler and the family of the handler.
	2. In some situations where the individual student is unable to meet the needs of the service animal, a designated handler may be required to support the student with the service animal. In this case, the student may be tethered (harnessed) to the service animal. Staff members who come in direct contact with the service animal will be provided training by the Service Animal Association in order to act as the handler.
	3. For the purpose of this guideline, the use of a service animal by an employee with a disability will be allowed when such use is necessary as a reasonable accommodation to enable the individual to perform the essential functions of their job as an employee or to access benefits of employment provided to all employees in the same job classification.
	4. For the purpose of this guideline, the use of a service animal by a student with a disability will be allowed when such use is necessary as a reasonable accommodation to enable the student to access the Ontario Curriculum and to access other benefits of school as provided to all other students within that same school.
	5. Service animals must wear the distinctive harness/vest or saddlebag while working in any area where applicable. The service animal must be on a leash at all times while “working”.
	6. “Non- working” time may occur when the service animal is not allowed by law in areas where food preparation occurs and in other areas involving machinery or chemicals etc. where it may be unsafe for the service animal. In these situations, the service animal is in its crate with its collar, vest, harness removed.
1. **The definition of “Disability” from the Ontario Human Rights Code (OHRC)**

**Disability means:**

a) Any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or physical reliance on a service animal or on a wheelchair or other remedial appliance or device;

b) A condition of mental impairment or a developmental disability;

c) A learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language;

d) A mental disorder, or

e) An injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997; ( handicap)

**5.0** **Service Animals must be Adults:**

**Service Animals must be adult animals.** For example: service dogs should be at least 12 months old. Service dogs must have the maturity and temperaments to behave calmly at all times in all TDSB settings and under in all situations of emergency or any unforeseen circumstances. Service animals must have toileting control.

1. **Established Relationship between the Service Animal and the Employee/Student:**

The relationship (bond) between the service animal and the employee/student must be established **PRIOR** to the service animal’s arrival at school/workplace.

1. **Bus Loading**

**If bus loading** is necessary, the parent/guardian/support person will be responsible with the service animal provider in establishing routines and seating procedures to ensure safety for all stakeholders on the bus.

The parent/guardian/support person will be responsible for loading/unloading of the service animal.