# Report to Toronto District School Board Special Education Advisory Committee

From: David Lepofsky, SEAC Chair

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Here is some background that will help you prepare for the May 13, 2024 SEAC meeting.

## Reflections on the April 8, 2024 Presentation to SEAC by ARCH Disability Law Centre Executive Director Robert Lattanzio

Let me highlight some key take-aways from the excellent and informative presentation to SEAC at our April 8, 2024 meeting by Robert Lattanzio, Executive Director of the ARCH Disability Law Centre From his description of requirements of the Ontario Human Rights Code and the rights of students with disabilities, we learned that several reforms we are raising with TDSB are all aligned with the human rights of these students. This includes, for example:

* The request that TDSB tell parents/guardians of students for whom an Individual Education Plan (IEP) is being developed that they can request an IEP meeting with staff, what an IEP meeting is, and how it could benefit their child.
* The requirement that TDSB fully accommodate students with any kind of disability, whether or not the disability falls within the artificially narrow definition of “exceptionality” that emanates from the Ontario Government.
* The need for strong protections against students with disabilities being excluded from school for all or part of the school day, whether this is done formally or by a simple informal call to the child’s parent.
* The need for a fair and swift process within TDSB to effectively address disputes between a parent/guardian and TDSB over what disability accommodations the student requires, and/or whether TDSB is delivering the accommodations to which it committed in the student’s IEP.

## TDSB’s Duty to Accommodate All Students with Disabilities

As was raised at the last SEAC meeting during the discussion with Robert Lattanzio, a potential for confusion at all school boards is created by Ontario’s Education Act, and its special education regulations.

The Ontario Human Rights Code imposes on all school boards a duty to accommodate students with disabilities. The term “disability” is defined very broadly in Section 10 of the Code as meaning:

”(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 co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other 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")”

In sharp contrast, the Education Act creates a narrower system of “special education.” The only students who are eligible for “special education” are “exceptional pupils” as defined in the Education Act or the special education regulations enacted under it. They define “exceptional pupil” more narrowly than the Ontario Human Rights Code definition of “disability.” Under the Education Act and its regulations, a student is eligible for special education only if they have an “exceptionality.” “Exceptionality” includes some disabilities, but not all disabilities.

There is therefore a big and troubling inconsistency between the Ontario Human Rights Code on the one hand and the Education Act’s special education provisions on the other. There are some students with disabilities who are entitled to have the school board accommodate their disabilities as a result of the Ontario Human Rights Code, but who are not eligible under the Education Act for “special education” because their disability does not qualify as an “exceptionality” under the Education Act.

This conflict threatens to create a bureaucratic barrier for students whose disability is not defined as an “exceptionality”. To be clear, it is the Ontario Government and not TDSB or any other school board that created this barrier. However, no matter who created it, TDSB still has the duty to overcome it because of its duty to accommodate all students whose disability is covered by the Ontario Human Rights Code, whether or not their disability is also defined as an “exceptionality” under the Education Act and its regulations. That includes a duty on TDSB to be alive to this potential bureaucratic barrier, and to take effective active steps to remove it.

How could this barrier materialize? Among the 580 principals and hundreds and hundreds of teachers at TDSB, there is a real risk that at least some of them will mistakenly think that “special education” is only available for students who have a condition that falls within the definition of “exceptionality”. A parent, for example, could be told that their child is not eligible for an Individual Education Plan because their disability is not an “exceptionality”.

It is good that TDSB has told its staff that a student can be given an IEP even if they have not gone to a hearing at an Identification and Placement Review Committee (IPRC) and had their child formally identified as an exceptional pupil. Indeed, I understand that there are many students at TDSB who have an IEP and who have never gone to an IPRC. That is a good step. However, it does not eliminate the risk that some students could be refused an IEP because some principal or teacher thinks, incorrectly, that they do not provide IEPs for students unless the student’s disability falls within the provincial definition of “exceptionality.”

That confusion would be understandable. The Ontario regulation that explicitly spells out the duty to provide an IEP is part of Ontario’s special education regulations and is tied specifically to “exceptional pupils” i.e. pupils who have an “exceptionality.”

I of course don’t mean to suggest that TDSB does not want to effectively and fully serve all students with any and every kind of disability. Speaking for TDSB earlier this year at SEAC, Angela Nardia Ddesa explained how TDSB has a strong duty to accommodate all students with disabilities under the Ontario Human Rights Code.

What should TDSB do about this? At our upcoming SEAC meeting, we will have an agenda item on this. I will invite SEAC members to chime in and share their experiences and that of their associations with this issue.

We can also suggest solutions.

It could be very helpful for TDSB to explicitly tell all its principals, teachers and other educators that TDSB is prepared to provide an IEP for any student with any kind of disability as defined in the Ontario Human Rights Code, and that IEPs are not limited to students whose disability is defined as an “exceptionality” within the meaning of the Education Act and its special education regulations. For TDSB to put this clearly and categorically in writing, to send it to all its staff, and to share it publicly on its website and brochures with parents, would be a quick, inexpensive and effective way to root out this barrier.

## Welcoming TDSB Student Trustees

TDSB has three student trustees, who serve as members of the governing board at TDSB. I have invited them to our upcoming SEAC meeting. This will give us a chance to come up with ways to amplify the voices of the over 40,000 students with special education needs at TDSB. Let’s hear what they have to say, and be ready to brainstorm ideas for them as well.

The new TDSB Multi year strategic plan includes:

“Expanding platforms for student voice and leadership, helping them to shape their educational experiences and contribute meaningfully to the school community.”

Let’s think of ways that TDSB could facilitate this for its over 40,000 students with special education needs.

## Reflections on the TDSB’s New Protocol and Policy for Community Advisory Committees (CACs)

Back on February 21, 2024, I wrote TDSB trustees to identify several serious objections to the new TDSB protocol and policy for CACs. I made it clear that as SEAC Chair, it is my view that it does not apply to SEAC, whose mandate is created by provincial regulations which TDSB policies cannot override or weaken. I also expressed serious concerns that we were not fairly and properly consulted on it.

I have not heard anything back from TDSB trustees in response to this. TDSB staff are now spending what appears to be quite an amount of staff time to implement it. Moreover, TDSB appears to expect that CAC co-chairs, such as the SEAC chair and vice-chair, should devote hours to taking part in webinars that TDSB presents on these protocols. Speaking for myself, I do not have the time for this, and, respectfully, was never asked if I did. TDSB should, I believe, be more respectful of the substantial time we devote to SEAC as volunteers. Unlike the staff creating all this work, we are not paid for our time.

We have heard from some TDSB staff and trustees on a number of occasions that TDSB has a budget deficit, and that the Ontario Government does not cover all the budget that TDSB spends on special education. At our April 8, 2024 SEAC meeting, ARCH Executive Director Robert Lattanzio, answering a great question from a trustee, explained the Supreme Court of Canada’s Moore decision. In that case, the Supreme Court ruled that before a school board can claim that it cannot afford to pay for a needed special education service, it should first look within its other activities to see if resources can be reallocated to that special education need.

Here, especially with its budget deficit problem, it would make sense for TDSB not to spend staff time and resources on something so far removed from the needs of our students, like developing and then running training sessions and otherwise implementing the CAC protocol and policy. Those staff members could do more for our kids by providing direct support in classrooms to students with special education needs.

## The TDSB Multi-Year Strategic Plan Was Approved Without Our Requested Additions

On April 17, 2024, I appeared in person to make a deputation at the meeting of the entire TDSB school board, including all the trustees. I explained why it was important for TDSB to amend the proposed TDSB Multi Year Strategic Plan MYSP to include the proposed addition that SEAC had recommended. Last month, the TDSB Priorities and Planning Committee rejected our recommendation. I also offered a narrow “middle ground” alternative, as a fall-back position, but explained to the trustees in clear and strong terms that SEAC had not endorsed that alternative.

It is very frustrating that the trustees simply approved the MYSP as staff recommended it, without any of the changes for which I advocated. The fact that staff would not support our recommendations is strong proof why the trustees needed to intervene, in the interest of better provisions for students with special education needs. The fact that the trustees did not act on any of our input is a cause for real concern. It means we have more work to do. That should not and, I predict, will not deter us from advocating for reforms that our students need.

## My Presentation to the TDSB Inner City Advisory Committee

On Thursday, April 11, 2024, I made a presentation to a meeting of the TDSB Inner City Advisory Committee. I highlighted the priority areas on which SEAC is currently working, and offered for SEAC and the ICAC to collaborate together.