



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-1695

Appeal MA-030193-1

Halton District School Board



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NATURE OF THE APPEAL:

The Halton District School Board (the Board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for access to the following documents:

1. Each and every record of [the appellant's daughter]
2. A document entitled, "*A Guide to Student Services*"
3. A document entitled "*Process for Dispute Resolution on Significant Aspects of the IEP*"
4. A document entitled "*Special Education Advisory Committee (SEAC) Flyer*"
5. Records relating to Individual Education Plan (IEP) 2002/09/24,... re "*Instructional Strategies to Address [appellant's daughter's] Needs*".

The Board issued a decision granting the appellant access to the documents referred to in parts 2 through 4 of her request. In addition, the Board provided the appellant with access to the IEP requested in part 5 of her request. The Board also provided the appellant with two additional documents which they thought would be of assistance to her. With respect to part 1 of her request, the appellant was advised that she could arrange to view her daughter's Ontario Student Record (OSR) and obtain a copy of any documents which she may require.

The appellant appealed the decision of the Board to this office as she believes that additional records responsive to her request exist.

I provided the appellant and the Board with a Notice of Inquiry informing them that an oral inquiry would be held in order to determine whether the Board conducted a reasonable search for the records responsive to the request.

Prior to the oral inquiry, during the course of mediation, the appellant provided the mediator with a detailed listing of the types of records which she believes should exist. The mediator held a teleconference with the parties, resolving the appellant's concern relating to a number of the records identified. The parties were unable to resolve the appellant's concern relating to the remaining records. The parties agreed that this listing of records would be provided to the Acting-Adjudicator for the purposes of the oral inquiry.

The records identified as remaining in dispute for the purposes of the oral inquiry are as follows:

1. Correspondence between the Board, the Ministry and a number of specified parties relating to an application, filed by the appellant to the Trillium school.
2. Correspondence regarding programs and services recommended by the Community Care Access Centre (CCAC).
3. A CCAC program plan for occupational therapy, physiotherapy, speech/language therapy.
4. Meeting notes and recommendations of the School Resource Team (SRT) for the past 2 years.
5. A named Speech and Language Consultant's Assessment dated September 24, 2002.
6. Suggested Instructional Strategies by the Speech and Language Consultant dated September 24, 2002.

7. Itinerant notes: auditory/visual.
8. Ministry equipment claims for SEPPA grants and ISA Level 1.

I conducted the inquiry via teleconference. Oral representations were presented by the appellant and three representatives of the Board, namely, the Freedom of Information and Protection of Privacy Coordinator, the Superintendent of Education, and the Manager of the IPRC process.

DISCUSSION:

Where a requester provides sufficient detail about the records that she is seeking, and the institution indicates that further records do not exist, it is my responsibility to ensure that the institution has conducted a reasonable search to identify all records responsive to the request. The *Act* does not require the Board to prove with absolute certainty that further records do not exist. To properly discharge its obligations under the *Act*, the Board must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate all responsive records. Specifically, a reasonable search would be one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably responsive to the request.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist.

Just prior to the oral inquiry, the appellant provided this office and the Board with faxed documents which she intended to use as evidence in support of her contention that additional records exist. The appellant referred to a number of these documents during her submissions. For the most part, these documents refer to matters and/or records which the appellant contends should be reflected and/or contained in her daughter's OSR.

At the hearing, the Board provided their submissions relating to the steps taken to respond to the appellant's original request. Specifically, the Coordinator advised that, as she does not have extensive knowledge of all of the documentation requested, she referred the request to experienced employees who would have knowledge of the requested records. Specifically, the Superintendent of Education, the Manager of the IPRC Process and the Principal of the school attended by the appellant's daughter were involved in the search efforts to locate the requested records. While the Principal of the school was not in attendance at the hearing, the Board advised that he has provided them with details of his search.

The Board advised that the following steps were taken in their search to locate the records:

- Files at the school (including the OSR of the appellant's daughter as well as the notes in the SRT binder) were reviewed,
- The Trillium School was contacted and asked to provide the Board with all responsive records,
- The records held at the Board office were reviewed,
- The records held at the Educational Centre were reviewed,

- The relevant individuals and/or organizations (such as the CCAC, the teachers and professional staff involved with the appellant's daughter) were contacted.

Item 1

In her submissions, the appellant referred to correspondence in which the Trillium School requested or referred to specific documents. The appellant maintains that these documents are not present in her daughter's OSR and were not otherwise provided to her by the Board.

The Board advised that the documents relating to record 1 pertain to an application made by the appellant to the Trillium School. The Manager of the IPRC Process indicates that she was the individual involved in compiling the information relating to that application. She advises that, generally, in these cases, the school acts as a facilitator and coordinator, providing the information which they have which would substantiate or augment such an application. In this case however, the Manager of the IPRC advises that the appellant did not provide the Board with certain pieces of information as she wished to deal directly with the Trillium School. As a result, the Board advises that they had only part of the information that the Trillium School required for the application process.

As such, the Board advises that they would not have copies of all of the documents which the appellant provided directly to the Trillium School, nor would they have copies of the documents which the Trillium School provided only to the appellant. The Board submits that they have provided the appellant with all of the information which they compiled in relation to the application. In addition, the Board indicates that while it is the practise of the Trillium School to provide them with a completed application, to date, they have not done so. The Board also assured the appellant that once they are in receipt of that application, it would be included in the OSR.

Based on the above information, I am satisfied that the Board's search for additional documents in relation to item 1 was reasonable.

Items 2 & 3

The appellant referred to correspondence which she received from the CCAC which outlines all of the dates which the CCAC visited her daughter at her school. The appellant contends that the Board should have records of the services provided at each of these visits, along with any requisitions for equipment which the CCAC may have recommended.

In response, the Board advised that, in their search for these documents, the school was contacted to search the OSR and any other relevant files. In addition, the Board contacted their Psychoeducational Consultant and Area Coordinator to search for these documents. The Board maintains that the five documents released to the appellant were the only documents located as a result of their search.

The Board advises that, following a routine observation, the CCAC may have a verbal consultation with the teacher. However, the CCAC may not leave records with the school. The

Board states that the CCAC would leave a record with the school if they were recommending a change in process, or recommending additional support and/or another program. The Board indicates however that the programs for the appellant's daughter have been in place for some time.

In response to my questions, the Board clarified that, in cases where the CCAC may leave a record with the teacher, the teacher would then have that information included in the IEP. The Board stated that, as the information in such a record would be captured in the IEP, any such record would then be seen as supporting documentation or "rough notes" and would be destroyed.

Based on the evidence presented to me in relation to item 2 and 3, I am satisfied that experienced employees of the Board, who would have knowledge of the responsive records, were contacted and that their search for the responsive records was reasonable.

Item 4

The appellant maintains that additional SRT meetings were held which were not captured in the notes provided to her. The appellant maintains that all SRT notes should be contained within her daughter's OSR.

In response to the appellant's submissions, the Board has indicated that, when a child is discussed at an SRT meeting, the notes which are created are filed only within the school's SRT binder. In response to the appellant's request, the Board advises that the Binder was reviewed and that all of the notes relating to her daughter were released to her. The Board points out that the notes of the SRT are only kept for one year and that the OSR Guidelines do not require the notes to be filed in the OSR. As a result, any notes of meetings from previous years would not be retained.

To address the issue of storage and retention of records within the OSR, I asked the Board to provide me with a copy of their retention schedule. The Board subsequently provided this office with a copy of a document entitled "Ontario Student Guideline, 2000, Halton Procedures, 2003" (OSR Guidelines). Based on my review of that document, it appears that there is no requirement for the Board to file their SRT notes in a student's OSR.

Having considered the Board's submissions in relation to their review of the SRT binder, as well as the requirements of the Board's OSR Guidelines, I find that the Board has taken reasonable steps to identify and locate all records responsive to item 4.

Items 5 & 6

In her submissions, the appellant referred to her daughter's IEP dated October 8, 2002. Specifically the appellant has referred to a notation on the first page of that IEP dated September 24, 2002 as evidence of the fact that an assessment relating to her daughter should exist for that date. The document refers to a consultation between a teacher and a Speech and Language Consultant to review assessments and reports relating to the appellant's daughter.

The Board indicates that, in their search for an assessment, they contacted the daughter's teacher, the Speech and Language Consultant and the Principal. The Speech and Language Consultant advised that she did not create an assessment on that date but merely conducted an informal observation, followed by a verbal consultation with the teacher. The Board advised that it is their policy to create a report only if a formal assessment has been done. The Board further advised that, if any suggestions were made by the Speech and Language Consultant, they would be reflected in the IEP.

Based on the evidence presented to me in relation to items 5 and 6, I am satisfied that experienced employees of the Board, who would have knowledge of the responsive records, were contacted and that their search for the requested records was reasonable.

Item 7

The appellant submits that records relating to meetings and equipment claims by itinerant teachers should exist. The Board indicates that a search was conducted at the school, the Board Office and the Educational Centre for this information, however, no records were found. The Board states that, as of the date of the inquiry, they have been unable to contact the itinerant teachers.

The Board further advises that generally, if an itinerant teacher were to make specific recommendations, they would put them directly in the IEP. In such cases, they advise that any notes taken would be in draft form to be used for the purposes of the IEP. Once the IEP was updated, they would then destroy any such notes.

Once again, the OSR Guidelines were reviewed and I found that there is no requirement to maintain the notes of the itinerant teacher in the OSR. While the Board has taken several steps to search for records relating to item 7, as the Board has indicated that they have been unable to contact the relevant itinerant teachers, and as these teachers may have additional knowledge of the whereabouts of any additional records, I find that the Board has not provided me with sufficient evidence to conclude that its search for all records responsive to item 7 was reasonable. I will therefore order the Board to contact the relevant itinerant teachers to search for records responsive to item 7.

Item 8

The appellant submits that documentation should exist within the OSR reflecting recommendations and/or requests for SEPPA grant money and equipment for her daughter. With respect to ISA Level 1 equipment claims, the appellant referred to documentation relating to a recommendation that her daughter receive a laptop computer.

The Board clarified that no documentation exists relating to the appellant's daughter's entitlement to SEPPA grants, as this funding is not based on individual students but on the number of students as a whole. With respect to ISA Level 1 claims, the Board indicated that they contacted the purchasing department of the Ministry of Education to search for records

relating to their claim for the laptop computer at issue. The Board states that a record was located. While this record was created after the date of this request, and therefore outside the scope of this appeal, the Board has agreed to forward same to the appellant.

Based on the evidence provided to me at the inquiry, I am satisfied that the Board's search for documents responsive to item 8 was reasonable.

FINDINGS:

The Board contends that much of the appellant's concerns relate to the Board's record keeping practices. As such, the Board submits that the issue in this case is not whether the documents sought by the appellant *should* exist but whether they conducted a reasonable search for the documents. As I indicated earlier, my responsibility is to ensure that the Board conducted a reasonable search to identify all records responsive to the request. The *Act* does not require the Board to prove with absolute certainty that further records do not exist. The issue for the purposes of this appeal is whether the Board has conducted a reasonable search for the records.

Based on the steps taken by the Board to respond to the appellant's request and locate the records at issue, I am satisfied that the Board has made reasonable efforts to locate all responsive records in relation to items 1, 2, 3, 4, 5, 6, and 8.

With respect to item 7, I find that, as the Board was unable to contact the relevant itinerant teachers, the Board has not provided me with sufficient evidence to conclude that their search for these records was reasonable.

While the sole issue to be addressed in this appeal has been determined, I feel it is appropriate to comment upon the Board's practise of destroying "rough notes". In this regard, I caution the Board to ensure that all personal information is retained in accordance with section 5 of Regulation 823 under the *Act*, which sets out the requirements for the retention of personal information.

ORDER:

1. I order the Board to contact the relevant itinerant teachers to search for records responsive to item 7.
2. I order the Board to provide the appellant with information as to the results of these further searches in accordance with sections 19, and 22 of the *Act*, treating the date of this order as the date of the request, and without recourse to a time extension under section 20 of the *Act*.

Original signed by: _____
Andrea Schwartz
Acting Adjudicator

_____ October 2, 2003