A Relic of the Past: Identification, Placement and Review Committees in Ontario's Education System

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Abstract
The Identification, Placement, and Review Committee (IPRC) process has been long established within Ontario special education practice and provincial legislation. Borne out of advocacy for advancing the right to education for children with disabilities, the IPRC process is now being critically explored as to whether the process itself creates an infringement on students' access and rights to quality education. Drawing on historical and contemporary shifts in education policy and human rights in Ontario, this paper presents the case that the current structure of the IPRC is outdated and may function as a significant barrier to students' academic futures.

Keywords: disability, placement, identification, inclusive education, human rights

Identification, Placement and Review Committees (IPRCs) have a long history in Ontario's education system. IPRCs are enshrined in the *Education Act* R.S.O. 1990, c. E.2, as a means to identify students with disabilities and to secure their placements in schools (OME, 2016). However, over the past several years, the IPRC framework has increasingly come under fire for the antiquated manner in which it fulfills this role. The process has been charged with being resource-heavy, requiring significant ongoing contributions from education professionals, and with the fact that there is little monitoring as to whether the benefits for students warrant the expense.

Although the IPRC is intended to address individual students, its inflexible processes mandate the usage of crude categorizations of student ability and frequently place students in standardized placements, while simultaneously minimizing or excluding student involvement in the process. Additionally, the IPRC process largely relies on the logic of a medicalized approach to disability (Connor, 2013), an approach that focuses more on "fixing" or rehabilitating children than it does on ensuring rights of access for children with disabilities.

Many of these issues can be traced to the institutional history of the IPRC and the fact that many of the roles that it was initially intended to fill are no longer as relevant as they once were. This paper employs a critical disability studies approach to examine the history and the role that the IPRC process currently plays in the Ontario public education system. As a theoretical frame, critical disability studies employ an intersectional approach to engage in the politics of disability and to promote societal transformation (Goodley et al., 2019). As the IPRC process is used to identify, categorize, and respond to perceived capacity, critical disability studies provide an ideal investigative tool to critique this system and to identify key elements necessary for systemic transformation and the advancement of disability rights.

Using this approach, this paper will highlight several areas where the IPRC process is either no longer relevant or falls short of its stated objectives, and will query whether 'the process' is privileged over outcomes for students. In doing so, this paper will discuss the core values which should drive policy reform and will make some limited recommendations about how a more responsive framework can be developed to better ensure that the rights of students with disabilities are upheld.

A Brief Overview of the Process

As noted above, the IPRC process is used to both identify students with disabilities and to place them in a setting deemed 'most appropriate' depending on the committee's conclusions around the student's perceived ability. Despite the subjectivity involved in the assessment of student ability (Parekh et al., 2018), the IPRC process is highly regulated. In broad strokes, the IPRC typically involves a formal meeting held at the student's school, attended by stakeholders involved in the student's education. Meeting attendees can include the student's parents, teachers, members of the school administration, representatives from special education, relevant professionals (e.g., school psychologists, physiotherapists, speech pathologists, social workers, etc.), and at times, though rarely, the students themselves. Although programming and accommodations could be discussed at an IPRC meeting, there are only two legally binding decisions that can be made through this process: 1) the identification of an exceptionality and 2) the determination of a student's placement. Students can be identified with one or more of twelve possible Ministry defined exceptionalities[1] and placed in one of five Ministry determined placement options.[2] If parents are unhappy with the decisions made at an IPRC meeting, *Ontario Regulation* 181/98 lays out a process through which parents can formally appeal identification and placement decisions.

A Brief History of the IPRC Process

In many ways, the shortfalls of the IPRC are a direct result of its institutional history. The IPRC, in its present form, was developed in the context of great change in education across North America. Slowly but surely, students with disabilities were gaining the right to attend school across the continent, a right which had previously been denied to them in many jurisdictions (Dickson & McKay, 1989). Ontario was no exception to this trend, in part because various advocacy groups across the province were continuously pressing the government to provide more comprehensive access to special education services for students with disabilities (Zegarac et al., 2008).

It was under these circumstances that Ontario's Minister of Education finally announced in 1978 a long-awaited plan to ensure that every student, regardless of disability, would have the opportunity to benefit from Ontario's education system. This plan would ultimately result in the passage of *The Education Amendment Act, 1980 ("Bill 82"),* a piece of legislation designed to make it mandatory for school boards across the province to provide "appropriate" special education services to students with disabilities (some school boards were in fact already providing these services).[3] However, prior to the enactment of Bill 82, the Ministry of Education determined that as a first step, it needed to create:

> …an early identification program to ensure that the learning needs of every child entering the schools will be identified. (Stephenson, 1978)

The Ministry felt that such a system was "essential" if "remedial programs [were to] be provided promptly" to students (Stephenson, 1978). At this point, even though some of the school boards that offered special education services already had a provincially mandated "admissions board" for placing or admitting students, few of them had developed any sort of early identification system to assess student needs. With this in mind, the Government passed *Ontario Regulation* 704/78, which set up the *Special Education Program Placement and Review Committee* (SEPPRC), which was a direct precursor to the IPRC's that we know today. In many ways, the new SEPPRC was not a radically new mechanism for identifying and placing students but was instead a revised version of the admissions board (Keeton, 1979). Admissions boards were essentially three person panels which, true to their name, were primarily responsible for determining whether to "recommend the admission of a pupil" to a special education program.[4] Many admissions boards also had the dubious distinction of being used to determine whether

[1] Learning Disability, Mild Intellectual Disability, Behavioural Exceptionality, Autism, Deaf or Hard of Hearing, Vision Impairment, Physical Disability, Gifted, Multiple Exceptionality, Developmental Disability, Language Impairment, Speech Impairment (http://www.edu.gov.on.ca/eng/document/policy/os/2017/spec_ed_2.html#categories)

[2] Regular class with indirect support, regular class with resource assistance, regular class with withdrawal assistance, special education class with partial integration, & full-time special education class (http://www.edu.gov.on.ca/eng/general/elemsec/speced/identifi.html)

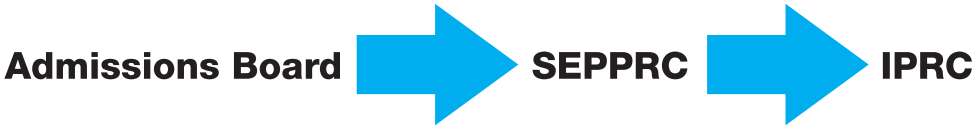
It is important to note that extensive research has been conducted on the efficacy of self-contained special education and inclusive education programs and has resulted in support for ensuring students identified with special education needs have access to inclusive programs (see Mitchell 2010, 2015 for an international review of empirical evidence).

[3] See: *The Education Amendment Act,* 1980, SO 1980, c 61 at s. 2.

[4] See: RRO 1970, Reg 191 made under *The Department of Education Act* at s. 44.

students were "unable" to profit from instruction, a designation which essentially abrogated their right to education in its entirety (Smith, 1980).[5]

Figure 1
Evolution of Identification and Placement Mechanisms in Ontario.



In any event, the new SEPPRC process, while an improvement over admissions boards in some respects, suffered from many of the same flaws, which were, in turn, passed down to the IPRC process. For example, the SEPPRC preserved the heavily medicalized orientation of the admissions board and provided almost no meaningful opportunity for parental (or student) input into placement decisions. The important factor in all SEPPRC placement decisions was professional judgement, not the views or experiences of parents and students. While it provided limited opportunities for parents to "consent" to a placement decision (unlike the prior admissions board procedure), there was no meaningful appeal mechanism for parents to challenge placement decisions (Keeton, 1979).[6] When the IPRC was initially in development in 1981, it seemed to be on track to maintain this draconian format until a limited and somewhat ineffective appeal mechanism was finally "wrung from the government by the opposition during heated debates" (Elkin, 1982, p. 323).[7] It appears that after years of dealing with unaccountable admissions boards and SEPPRCs, parental advocacy groups were chaffing for a greater say in the new IPRC process (Hodder, 1984). However, even with this limited concession, the government appeared bent on maintaining the primacy of school boards in the new IPRC process, viewing the school boards as the appropriate final decision maker on these matters.[8] This point of view appears to be reflected in the somewhat anemic appeal procedures that were ultimately introduced by the Ministry in 1982.

Beyond the issue of the outsized role of professional opinion and the inadequate mechanisms to challenge it, the government also maintained one of the other primary flaws from the admissions board (and SEPPRC) in the new IPRC process. True to its origins, the IPRC remained an "admissions committee" which, by definition, could not make decisions about the type of programming, services, or accommodations that students could receive in a placement. Like its predecessor panels (see: Keeton, 1979), the focus is more on whether a student should be 'admitted' to a predefined program rather than whether the programming can be made to fit the student.[9] At its very root, the IPRC is a body that is designed to categorize students and fit them into the existing structures of the education system rather than a mechanism that is designed to provide individualized support for the student. As a result of these restrictions, the IPRC is unable to make decisions about many of the critical elements related to a student's education, including those decisions about programming, in-school accommodations, and other supports designed to facilitate building relationships with peers and teachers.

Administrative Convenience

Despite its problematic institutional legacy, there were good reasons for the introduction of the IPRC in 1981 - however, many of these were primarily administrative. As noted above, Bill 82 made it mandatory for school boards to provide special education services. This vastly expanded the scope of special education services in Ontario, and despite the existence of the SEPPRC in some boards, it appears that the Ministry of Education had only a rudimentary understanding of the scale of the project upon which

[5] Pursuant to s. 34 of the *Education Act* (See also RRO 1970 Reg 204 at s. 2-3).
[6] See: O. Reg 704/78 at. s. 31
[7] The opposition (the Liberal Party and the New Democratic Party) were likely able to do this because they faced a minority government (Progressive Conservatives) at the time Bill 82 was passed.
[8] During the debates in the legislature about the proposed appeal mechanism, Minister Bette Stephenson expressed her support for the view that "one could not, on the one hand, hold education officials accountable and responsible for the education of exceptional children and, at the same time, remove from those individuals total responsibility for decision-making in that area." (Stephenson, 1978)
[9] In 1998, the IPRC regulation was amended to at least attempt to address this problem. It now allows the IPRC Committee to make a "recommendation" about the type of programming which should be in place. Although in practice it is rare that the IPRC would exercise this ability.

it was about to embark.[10] This is evident from the 5 year transition period mandated by Bill 82[11] and comments by the Minister indicating that the Government was not "omniscient" and that careful study was required in order to ensure that "educational programs [were available] for all exceptional children" (Stephenson, 1980, p. 4394).[12] The Government's lack of knowledge was perhaps inadvertently echoed by an MPP of the Liberal Opposition who on November 18, 1980 had only the vaguest notion of how many students still needed special education services:

> The best information I have is that there are between 80,000 and 100,000 students in this province who still need special education. (Sweeney, 1980, p. 2944)

The imprecise knowledge of the scale of the commitment the Government was making likely underscores one of the primary reasons for the development of the new IPRC process - namely that the Government had only a limited estimate of how many students might be recommended for special education services and the type of services those students might access. This meant that the first phase of any program to reform the delivery of special education services in the province required a systematic effort to identify who in fact was believed to need these services. This conclusion is reinforced by the fact that after the first IPRC regulation was developed (*O. Reg.* 554/81) and implemented, it was ultimately tied to the funding model for special education in 1982.[13]

Purpose of the IPRC

With this brief history in mind, we can glean three basic reasons for the existence of the IPRC model as it was originally developed. These can be summarized as follows:

1. To ensure that children with disabilities are identified early so that special education services can be provided to them promptly (see Minister's comments above);
2. To assess the scope of the special education services that were required to implement Bill 82 and to properly fund them on an ongoing basis; and
3. More controversially, to establish a more robust appeal mechanism for placement decisions.

Each of these will be discussed in turn with consideration towards whether it is still relevant today.

Early Identification and Prompt Provision of Programming

Identification

The history outlined above, as reflected in the comments of the Minister of Education, suggests that the early identification of children with disabilities is one of the primary reasons for the existence of the IPRC. This is reinforced by Program Policy Memoranda No. 11 (still in force), released in 1982 by the Ministry of Education, which explicitly puts forward this rationale:

> Each school board is required to have approved and in operation by September, 1981, [IPRC] procedures to identify each child's level of development, learning abilities and needs and to ensure that education programs are designed to accommodate these needs and to facilitate each child's growth and development…. (Ministry of Education, 1982, para. 1)

It is also important to point out that although the government emphasizes the significance of early identification and prompt services, in the early 1980s the IPRC was also making determinations about *eligibility* for the special education programs as well.[14] That is, it was functioning as a gateway to the right to access an 'appropriate' education. This is of some import because, when the IPRC regulations came into force, disability had only recently become a ground under the *Human Rights Code* (1981), and students did not yet have the same level of protection that they now enjoy under this legislation.[15] Students could not use the *Code,* or the rights therein, to bypass the IPRC process as they potentially

[10] Indeed, as late as May 1980, the Minister was only then initiating "a study of education caseloads and class sizes…" (Stephenson, 1980).

[11] See: *The Education Amendment Act, 1980* SO 1980, c 61 at s. 17.

[12] This is also evident from the planning guide issued by the Ministry of Education which exhorted boards to develop a picture of the students they were currently serving and how many students they expected to serve as the mandatory requirement to provide special education services became operational (Ministry of Education (Ontario), 1981).

[13] See: *The Education Amendment Act, 1980* SO 1980, c 61 at s. 2(2) & Ontario Regulation 197/82 at s. 12

[14] Section 1 of *The Education Amendment Act, 1980*, defined a "special education program"

[15] See: *Re Lanark, Leeds & Grenville County Roman Catholic Separate School Board and Ontario Human Rights Commission et al.*, 1987 CanLII 4040 (ON SC) & *Campbell v. Toronto District School Board*, 2008 HRTO 62 (CanLII) at paras 47-53.

could today. This effectively meant that the only way to obtain these services was to be identified as 'exceptional' through the IPRC process.

Given the developments of the past forty years, we may now ask whether these objectives are still important. We should be asking whether the IPRC process is still necessary to facilitate early identification and prompt service delivery as well as determinations about eligibility for services.

With respect to early identification, when we examine data from Ontario's (and Canada's) largest public school board, the Toronto District School Board (TDSB), it is clear that students are being 'identified' and accommodated, at least by their teachers and schools, potentially years prior to engaging in the formal IPRC process (Brown & Parekh, 2010, pp. 14-15).

Figure 2

New Individual Education Plans Assigned by Grade, over 2005-6, 2008-9. 2010-11 within the Toronto District School Board (Brown & Parekh, 2013, p. 19).

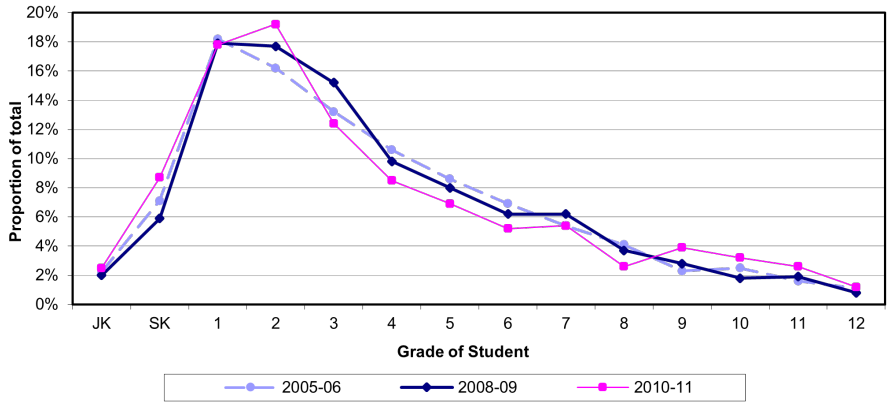
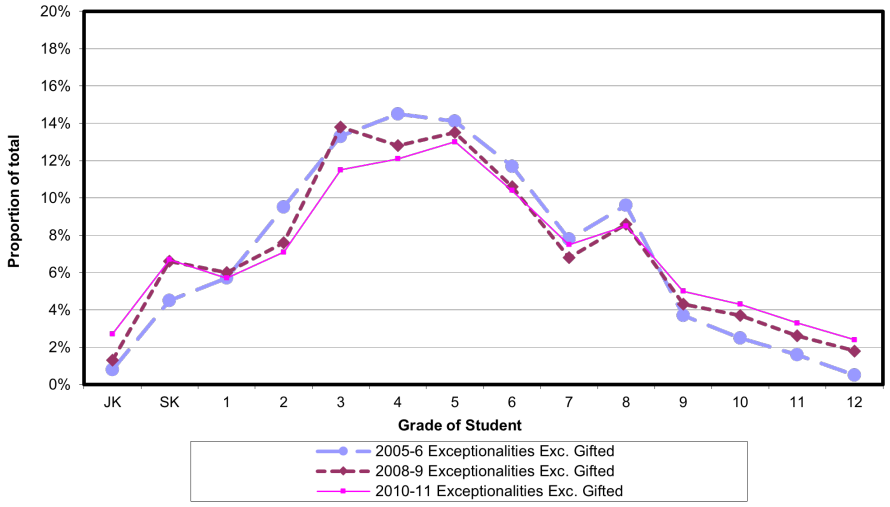


Figure 3

New Formal Exceptionalities Assigned by Grade, over 2005-6, 2008-9. 2010-11 within the Toronto District School Board Retrieved from (Brown & Parekh, 2013, p. 20).



As shown in Figure 1, the peak grades in which students are informally identified and receive an Individual Education Plan (IEP) are between Grades 1-3. Interestingly, the peak grades in which stu-

dents are formally identified and receive a formal exceptionality through the IPRC process are typically between Grades 3-5. As noted in the two figures, these patterns have been replicated over a number of years and may illustrate the time it has historically taken to move from informal to formal identification. However, it also begs the question, that if students can be informally identified and accommodated through an IEP, as well as placed in some self-contained special education programs (Parekh & Brown, 2019), what, therefore, does the formal IPRC process offer students and educators?

When it comes to determinations of eligibility for services, the IPRC has become hopelessly outdated. Changes in the legal landscape, including the evolution of human rights law and the development of a more fulsome right to equal access to education have made the IPRC effectively irrelevant when it comes to determinations about eligibility for special education services. The *Human Rights Code* now more clearly mandates that school boards must provide proper programming and accommodations to a student regardless of whether they have been identified by the IPRC process or not. This approach was confirmed to be the policy of the Ministry in 2010 when it reassured the Auditor General that Boards could provide "special education programs and services without a formal identification process" (Auditor General, 2010, p. 389).[16] In the TDSB, close to half of all students accessing special education services have not gone through the IPRC process (Brown & Parekh, 2013). This suggests that the importance of the IPRC process as a gateway to accessing education services has diminished significantly.

Despite the limited relevance of the IPRC as an eligibility mechanism to special education services, we might still ask whether the early identification process the IPRC regulations create still yield some benefit for students. That is, is there some substantive benefit that students receive when they are 'identified' with an exceptionality label and placed through the IPRC process? To answer this question, one would have to weigh the possible benefits against the established detriments of the IPRC process. The available evidence suggests that the answer to this question is no.

Benefits of Identification?

It is worth noting that even at the time the IPRC process was created, the categories of exceptionalities were deemed "unscientific" and lacking any empirical basis.[17] Those reviewing Bill 82 at the time suggested that it was unclear why these labels were used as they did not appear to convey much in the way of useful information to educators (Elkin, 1982).

Further experience appears to have borne out this concern. Educators and education researchers have noted that exceptionality categories encompass a great diversity and degree of impairment and that being labelled with an exceptionality does not necessarily convey to an educator how a particular student should be taught or accommodated (Mitchell, 2015; Ridgeway, 2017). For example, there are several forms of learning disabilities encompassed within the 'learning disability' exceptionality label. In this situation, teachers cannot assume that a particular pedagogical approach will work for all students who have a 'learning disability' identification. It is more important that teachers develop a relationship with students and learn how to functionally accommodate students in their classrooms. How teachers differentiate their instruction cannot be determined on the basis of an identification label. In fact, evidence demonstrates that designing a pedagogy based on a students' exceptionality label or perceived disability is not successful (see Mitchell, 2010; 2015 for an international review of empirical evidence).

The lack of useful information conveyed to a teacher through the IPRC process is further compounded by the fact that, in practice, IPRC decisions are not often adequately reported or justified, and that useful information to support teachers in the accommodation process is often unavailable through the IPRC.[18] The Auditor General made several recommendations to remedy this situation, including keeping better records and ensuring the rationale for their decisions is thoroughly documented. Although the Ministry has issued some guidance on this point since that time (Ministry of Education, 2017), it

[16] "The Ministry also advised us that school boards have the flexibility to provide special education programs or services to address a student's needs without a formal identification process in order to achieve timely delivery of effective programming in a way that respects the integrity of the IPRC process and parents' rights while minimizing administrative requirements" (Auditor General, 2010, p. 389).

[17] Note that these categories should not be confused with the type of diagnostic labels used by the medical profession.

[18] "Identification, Placement, and Review Committees (IPRCs) make significant decisions regarding the education of students with special education needs, but do not adequately document the rationale for their decisions and the evidence they relied on. As a result, information that would be of use to IPRCs conducting annual reviews and to teachers in connection with the preparation of IEPs is not available." (Auditor General's Report, 2008, p. 366).

remains unclear how practice with respect to documentation and information sharing has changed on the ground in response to these policies.

Beyond their limited practical utility, the identification process also presents further problems because the exceptionality labels used on students can carry connotations that are stigmatizing (Brantlinger, 2006). They shape how students feel about themselves, and the perception others hold both within and outside the education system (Parekh, 2019). Labels can also influence teachers' expectations of students' abilities (Mitchell, 2010), resulting in reduced access to important academic opportunities.

This is especially problematic when we consider the fact that many children from historically marginalized communities are disproportionality represented in some exceptionality categories and special education programs (Connor, 2017; De Valenzuela, 2006; Parekh & Brown, 2019). Students who are racialized, male and/or live in lower income households are often overrepresented in some 'high incidence' or "judgmental" special education categories (Artiles et al., 2010). Scholars have argued that these outcomes exemplify the operationalization of negative beliefs about particular groups. All of this suggests that the 'early identification' process undertaken by the IPRC is of dubious value.

Benefits of Placements?

Even setting aside the value of the labels used by the IPRC process, we can also question the role it plays in placing students in self-contained special education classes, effectively propping up a segregated system of education. The IPRC mechanism is founded upon the principle that at least some students with disabilities will benefit from placement outside of the regular classroom. The IPRC is charged with selecting which students will in fact "benefit" from these segregated placements. However, the idea that children should be identified and streamed into segregated placements based on disability was controversial even in the early 1980s. Some commentators pointed out that there was no data to support the practice of segregating children into homogenous ability groupings (Elkin, 1982) and that many studies produced inconclusive results as to whether students with disabilities did better in segregated or regular classroom settings (Robichaud & Enns, 1980).

Since that time, a great deal of research has continued to focus on this same question - namely, whether it is better to place students in segregated environments or to educate them in inclusive classrooms. Generally speaking, the empirical research on the academic benefits of inclusive education so far has ranged from no observable differences between inclusive and special education placements to significant benefits for students taught in inclusive classrooms (Mitchell, 2010; Hehir et al., 2016). On the other hand, empirical research demonstrating the benefits of segregated special education placements is scant (Mitchell, 2010). In fact, the identification and segregation of students based on perceived ability have been attributed to the reproduction of inequitable social, class and racial stratification in broader society (Artiles et al., 2010; O'Connor, & Fernandez, 2006; Clandfield et al., 2014; Duncan-Andrade & Morrell, 2008) and there is a continuously growing body of evidence that supports inclusion for all students (Hehir et al., 2016; Krings, 2015; Burello et al., 2013). Furthermore, the OECD has noted that education systems that integrate their lower-achieving students perform better overall (OECD, 2012).

All of this suggests that even at the time the IPRC was developed, the system of placing students in segregated classrooms stood on shaky empirical foundations. Since that time, research has suggested that these foundations have become even more tenuous and that the implicit assumption built into the IPRC, that some students will benefit from segregated placements, is in fact, doing a disservice to many students when it comes to providing them with a meaningful education.

Properly Funding the Education System

Given that the IPRC is showing its age when it comes to whether it benefits students or assists teachers, we can now begin to ask whether the IPRC process still fulfills an important organizational role within the school system. As noted above, it was not clear in the early 80s that the Ministry understood precisely how many children with disabilities were going to require special education services. As such, it made some sense to create a revised process which they could use to identify children with disabilities (with convenient labels) and fund the services that they were presumed to require. The result was the IPRC, which was then linked with the funding mechanism for special education.

However, problems soon emerged with this model. The Ministry soon realized that when funding

was attached to the IPRC process, there was an observable spike in exceptionality identifications (Green & Forester, 2002) - an aptly named phenomenon termed 'diagnosing for dollars' (Rozanski, 2002). Beginning in 2006-7, the Ministry began moving away from a model that employed 'student-based claims' as an indicator for funding (MOE, 2006, p. 32). Instead, the Ministry implemented a hybrid funding model that employed the previous year's High Needs Amount divided by that year's Average Daily Enrolment. Following this, the Ministry transitioned to another model, the Special Education Statistical Prediction Model (SESPM) (MOE, 2010). This funding structure uses a statistical model to predict the number of students who have special education needs based largely on socio-demographic variables (e.g., parental occupation, education, income, immigration status, etc.). The goal of this model is to predict how many students require special education services, identified or not (MOE, 2011). In doing so, this model effectively sidesteps the IPRC process as the mechanism by which funding is distributed. All of this is to say that any role that the IPRC may have had in the funding or planning process for special education services has long since expired.

Establishing Appeal Mechanisms for Placements

The final potential use or purpose of the IPRC process is the one that was "wrung" out of the government during the debates about Bill 82, namely its role as a dispute resolution forum. Ironically, given the resistance of the government at the time, this function may be the one that still holds the most relevance. Many families still experience high levels of conflict in the special education system (Reid et al., 2018), and a path to appeal certain decisions (i.e., placement and identification) still exists within the confines of the IPRC process. However, the utility of this process is limited to a large extent by the jurisdictional limitations of the IPRC - that is, its inability to decide matters related to services and programming, one of the primary areas of disagreement between schools and families (Reid et al., 2018).[19] As discussed above, this is a limitation largely inherited from the predecessors of the IPRC and harkened back to a time when the focus of the process was solely on admission to special education programs. The Ontario Human Rights Commission (2003) has noted that this limitation has continued to cause significant frustration to many parents and student advocates and has played a significant role in hindering the effectiveness of the IPRC as a dispute resolution forum. This may, in part, explain why the Special Education Tribunal has seen very few new cases in the last decade (15 reported decisions as of May 2020).

To a limited extent, the Human Rights Tribunal of Ontario (HRTO) has taken up the mantle as a dispute resolution forum for special education, as it has a greater ability to deal with matters related to services and programming. However, the HRTO is not an ideal process for the resolution of this type of issue. Even with the expedited mediation timelines within the Child and Youth Division of the Social Justice Tribunals (SJTO, 2017), the process at the HRTO can be cumbersome and lengthy and may require the expenditure of significant resources on legal counsel. The HRTO has also demonstrated significant reluctance to wade too far into the enforcement of the *Education Act* and, perhaps rightly, is only concerned with whether school boards have broadly complied with *Code* guarantees.[20] Ultimately, this means that significant gaps exist within the available dispute resolution mechanisms.

While this is a discouraging situation for many families and suggests a significant need for reform, it does point to the fact that there may still be a place for either a completely overhauled version of the IPRC or a completely new process. In either case, the focus must be less on sorting and labelling students and more on providing students and families with an effective dispute resolution forum.

Reforms

Any effort to reform or replace the IPRC process should in large part, be guided by the goal of maximizing the rights of students with disabilities and better ensuring that they receive a meaningful education.

19 It should be noted that in the past the Special Education Tribunal has at times seen fit to address the issue of the programming or services when disagreements occurred about these in the context of a disagreement about placement. However, the Tribunal is clear that "when the parents' dissatisfaction is primarily or exclusively focused on such matters as programming, [and] services", they cannot expect a remedy from the Tribunal. See: *W. F. v. Ottawa Catholic District School Board*, 2008 ONSET 4 (CanLII) at para ii. Furthermore, it is clear that the actual IPRC and the Special Education Appeal Board do not have this type of jurisdiction under the regulation and are limited to making recommendations about these issues even in the event of a disagreement over placement.

20 See: *Schafer v. Toronto District School Board*, 2010 HRTO 403 at para 71; *Sigrist and Carson v. London District Catholic School Board*, 2010 HRTO 1062 at para 68; & *U.M. v. York Region District School Board*, 2017 HRTO 1718 (CanLII) at para 97.

This goal is at the heart of Canada's international human rights obligations, embodied in Article 24 of the *Convention on the Rights of Persons with Disabilities*, which commits Canada to realize a fully inclusive education system that is geared towards ensuring that persons with disabilities develop to their fullest potential (UN General Assembly, 2007). *General comment No. 4 (2016) on the right to inclusive education* more fully elaborates on this commitment, highlighting, among other things, the necessity that States Parties:

1. Move progressively towards abolishing all segregated forms of education and move towards a fully inclusive system (para 40);
2. Provide individualized programming and accommodations for students with disabilities (para 28-30);
3. Afford students with disabilities with a substantive opportunity to express their will and preferences with respect to educational issues and ensure that these preferences are given due consideration (para 50, para 63(l)); and
4. Ensure that persons with disabilities "have access to justice systems that understand how to accommodate persons with disabilities and are capable of addressing disability-based claims" (para 65). (UN Committee on the Rights of Persons with Disabilities, 2016)

As noted above, and in part because of its institutional history, the IPRC largely fails to meet these requirements. Its very existence is premised on the idea that education is delivered in a segregated environment. Its "one size fits all" approach to placement virtually ensures that programming and accommodations issues are often ignored in this forum. Its regulations also limit student involvement to those over the age of 16 (see: s. 5 of O. Reg. 181/98), and it utterly fails to provide an appropriate forum to adjudicate accommodation or programming issues.

While a fulsome review of all of the possible policy responses to these shortfalls is beyond the scope of this paper, there are some obvious candidates for change or improvement in the current framework.

Eliminating Identification and Categorization of Students

As noted above, the identification and categorization of students in the current system has limited utility. From both the student and teachers' perspective, identification labels provide little benefit and, in many cases, are in fact harmful. As part of a systematic literature review exploring the barriers to inclusive education, one of the key barriers to emerge were systems of categorization (Parekh, 2013). Some may argue that the identification of exceptionalities serves other purposes in the education system, like funding processes or resource allocation. However, as noted above, Ontario's experience with a funding mechanism based on labelling children with exceptionalities highlights the drawbacks associated with this type of approach (i.e., 'diagnosing for dollars'). The fact that Ontario has already transitioned to a model that relies more on demographic variables to allocate funding indicates that the utility of these labels for funding is limited. This suggests that without concrete evidence as to how these labels actually benefit students, it is difficult to justify continuing this practice. With this in mind, the role of the IPRC process in labelling students should be brought to an end. Many jurisdictions around the world have been re-examining their processes of categorization and moving away from psychometrically defined categories through the adoption of non-categorical or broader categorical approaches (Parekh, 2013).

Expanding Dispute Resolution

The current version of the IPRC process has many flaws from both a jurisdictional standpoint and with respect to the fairness of the process. Any replacement for, or reform of, the IPRC process should be geared towards minimizing these flaws.

With respect to the issue of expanding the jurisdiction of the IPRC, this paper has canvased this issue at length, so it is sufficient to say that any potential dispute resolution forum should be able to address the full range of accommodation, programming and service issues that are often at the heart of disputes over the education of students with disabilities. If policymakers opted for overhauling the IPRC, this would involve altering Ontario Regulation 181/98 and s. 57 of the Education Act to ensure that the revised process had the appropriate powers to make decisions about these issues.

Maintaining a Rights-Based Framework and Improving Procedural Protections

Irrespective of the type of forum or process created, significant protections must be in place to ensure that all decisions made in this new forum are done in a procedurally fair manner and in accordance with a robust human rights-based legal framework. The creation of a responsive new dispute resolution process, or a revised IPRC process, must be driven by student needs, in particular the need to obtain appropriate, expert, holistic and timely resolutions within an accessible and procedurally fair process. New processes with the capacity to deal with a greater number of issues should not be an excuse to water down school board obligations to their students.[21]

With this in mind, a number of procedural shortfalls in the existing IPRC process should be born in mind when it comes to future reform. For example, as it presently stands, school boards appoint all of the decision makers at the early stages of the IPRC process.[22] Given that the dispute is typically between parents and the board, allowing the board to appoint the decision makers in the case of the IPRC does not engender trust in the process. The Centre for Appropriate Dispute Resolution in Special Education (2010), in a review of effective dispute resolution mechanisms in the United States emphasized that one of the key features of many successful systems was the presence of an impartial decision maker or mediator. The presence of an impartial decision maker or mediator ensures both greater trust in the process and ensures that any potential bias in decision making is eliminated. Any reformed process needs to include a compliment of impartial decision makers or mediators.

Other procedural shortfalls in the current process include ineffective disclosure requirements and a lack of supportive resources to allow students and families to play a more meaningful role in the process. Remedying these flaws would mean creating a stronger disclosure requirement than that which currently exists (see: s. 15(8) of O. Reg. 181/98) and introducing a wider range of resources to support proper advocacy. This could take many different forms, including perhaps the reinstatement of an expanded child advocate. Other possible resources could include the option to obtain Independent Educational Evaluations much like those provided under the *Individuals with Disabilities Education Act* (IDEA) in the United States, which according to some, has been a positive resource for some families when it comes to maintaining certain types of accountability (Schrank et al., 2006).

Unfortunately, a thorough analysis of all of the procedural shortfalls and necessary reforms to the IPRC process is beyond the scope of this paper. However, these suggestions should at least be illustrative of the fact that far more could be done to ensure a fairer, more equitable dispute resolution process.

Eliminating Barriers to Student Participation

As it stands, students under the age of 16 have no legal entitlement to participate in the IPRC process. A new or revised process should abolish this requirement. In its place, a new participatory right should be created with no age limitation. Student's should be allowed to participate to the extent that they are able to do so, and educators should be required to give their views due consideration in the education planning process.

A More Inclusive Education System

Although these more specific reforms would be positive steps for students with disabilities, they will mean little in the absence of broader and more systemic change within the education system. Simply replacing the IPRC system with something more effective at resolving disputes will not achieve meaningful change unless students have a more substantive right to inclusive education. To this end, the reforms discussed above must occur in the context of a wider reimagining of education policy in Ontario, one which explicitly prioritizes discarding the old institutional legacies of our segregationist education system and provides the necessary funding and resources to create classrooms that are truly inclusive of all students.

[21] Against this backdrop, a great deal of thought would need to be dedicated to defining the interactions between this new process and the HRTO and dealing with res judicata issues which may arise from potentially overlapping jurisdictions.
[22] O. Reg. 181/98: *Identification and Placement of Exceptional Pupils* at s. 11

Conclusion

In light of this last observation, it appears clear that the institutional legacies of the IPRC are just a small part of the larger more systemic problems that students with disabilities face when they are trying to gain access to education. However, this analysis demonstrates the IPRC still plays a clear role in preventing many students with disabilities from accessing a meaningful education. It is now incumbent on current policy makers to face up to the historical legacies of Bill 82 and redesign the current framework in the education to transform it into something that acts less as a barrier to education and more as a mechanism that preserves the rights of students with disabilities.

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