

Date Issued: March 26, 2024

File: CS-007693

Indexed as: The Parent obo the Child v. School District, 2024 BCHRT 91

IN THE MATTER OF THE *HUMAN RIGHTS CODE*

R. S. B. C. 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

BETWEEN:

The Parent on behalf of the Child

COMPLAINANT

AND:

School District

RESPONDENT

**REASONS FOR DECISION
TIMELINESS OF COMPLAINT
Section 22**

Tribunal Member:

Steven Adamson

Counsel for the Child:

Lauren Marshall

Counsel for the Respondent:

Connie Do

I INTRODUCTION

[1] On November 19, 2021, the Parent filed a complaint on behalf of her child [the **Child**] alleging that the School District discriminated against the Child in the provision of services based on mental disabilities contrary to s. 8 of the *Human Rights Code* [**Code**].

[2] The Tribunal initially decided to allow the complaint to proceed in its process as a continuing contravention under s. 22(2) of the *Code*. However, the decision was reconsidered at the School District's request. The Tribunal decided that the complaint might possibly be late filed and it was necessary to hear an application regarding timeliness under s. 22 of the *Code*.

[3] The Respondent filed an application to file surreply submissions. The Parent conceded they had raised new information or issues in their Form 5 and did not oppose the application to file surreply. I grant the Respondent's application to file surreply submissions and have considered it, along with the parties' other submissions, in rendering this decision. In particular, I have decided it is appropriate to consider the Parent's further information found in the Form 5 as she does not appear to have had counsel at the time her initial complaint was made and the further information and submissions provided arose out of the submissions made by the School District.

[4] The issue before me is whether to accept the complaint for filing against the School District either under s. 22(2) or s. 22(3) of the *Code*. I make no findings of fact and no determinations regarding the merits of this complaint.

[5] For the reasons that follow, I am satisfied that the complaint alleges a continuing contravention of the *Code* s. 22(2), and is accepted for filing.

II ORDER LIMITING PUBLICATION

[6] Rules 5(6) and (7) of the Tribunal's *Rules of Practice and Procedure* deal with the limiting of publication of personal information. Under Rule 5(7), the Tribunal limits in the ordinary course the public disclosure of information that would identify a minor. This complaint involves a minor and I have, therefore, decided to anonymize the parties on my own motion by

referring to the Complainant as “The Parent on behalf of the Child” and the Respondent as the “School District”.

III BACKGROUND

[7] The central issue in this decision involves determining whether arguable contraventions capable of forming a continuing contravention exist for a five-year period when the Child went to a school within the School District. As such, is it necessary to set out these events out in detail below.

[8] The Child attended an elementary school in the School District from September 2015 until December 2020. He has dyslexia, dysgraphia, and attention deficit hyperactivity disorder [ADHD].

[9] By the third week of kindergarten in 2015, the Parent alleges that the Child began complaining of constant nausea and experienced diarrhea and vomiting regularly. She states he told her that he was scared to go to school as the work was too hard and he could not do it. The Parent alleges that the Child’s physical ailments were only present on school days and he began resisting going to school, to the extent that he cried all evening before going to school and lay on the floor crying two to three hours before school. The Parent alleges this same pattern persisted throughout the entire time the Child attended the school.

[10] On April 4, 2016, the Parent wrote an email to the Child’s teacher noting he told her that he felt rushed when doing work at school, and despite trying his hardest he felt too slow in completing tasks. The Parent asked the teacher if there was anyway to help the Child feel like he was not behind others. The Parent alleges the teacher’s response indicating the Child should not be so hard on himself and not rush was an inadequate response to his learning disabilities and denied him a proper education.

[11] On November 8, 2016, the Child’s grade one teacher noted in an email to the Parent that she sent a set of alphabet cards home with him to practice sounding out and creating simple words with the Parent. In another further email on November 9, 2016, the teacher stated the cards were a beneficial tool in reducing the Child’s learning gap. In a further email on

November 15, 2016, the teacher acknowledged the Child's difficulties with vowel sounds and troubles with pronouncing some letters. The teacher included links to videos in the email for the Parent and Child with examples of correct sounds and pronunciations. The Parent alleges the teacher's accommodation of the Child's disabilities was inappropriate.

[12] In the fall of 2017, emails from the Child's grade two teacher to the Parent indicate the Child was offered one-on-one reading support and given 100 sight cards to help with his reading. Once again, the Parent alleges the School District's accommodation of the Child's disabilities was inappropriate.

[13] The Parent alleges that she had many conversations with the grade two teacher about how the Child continued to struggle with vowels and would guess words. She says that she notified the teacher that the Child was merely memorizing the sight cards and could not actually spell the words. The Parent also told the teacher her son was guessing words while reading by reviewing the accompanying pictures. The Parent alleges the School District's accommodation of the Child's disabilities was lacking.

[14] Around August 2018, before the Child started grade three, the Parent alleges that she asked his teacher if he may be dyslexic. The Parent says that the teacher assured her that her son's situation was normal, and he just needed to keep practicing. The Parent says that she thought that by raising the possibility dyslexia to the teacher it would prompt the teacher to investigate the issue more thoroughly. The Parent says that she ultimately decided to trust the teacher's opinion, which resulted in the Child not being appropriately accommodated for his disabilities.

[15] In September 2018, the School District conducted a functional behavioral assessment of the Child. Based on the assessment, in November 2018 the School District placed him in a literacy intervention group. The Parent alleges the placement was an inappropriate response to the Child's disabilities.

[16] On November 20, 2018, the Parent emailed the Child's teacher with concerns that his writing was not improving, despite some improvements with his reading.

[17] In December 2018, the School District created its first Individual Educational Plan [IEP] for the Child. The plan focused on addressing the goals of the Child attending school and managing his anxiety in a positive way at school. It also addressed various ways to increase his reading and writing to advance him from operating at a grade one level. The Parent alleges the IEP did not appropriately address the Child's disabilities.

[18] In June 2019, the Parent alleges the Child's IEP was updated with minimal change. She says that worksheets provided by the school over the summer were too hard for the Child to complete. Once again, the Parent alleges the School District's attempts to accommodate the Child's disabilities were inappropriate.

[19] In September 2019, the Parent alleges that she spoke to the Child's new grade four teacher about how far behind he was in spelling and mentioned the IEP. The Parent alleges the teacher was unaware that the Child had an IEP. The Parent alleges the teacher inappropriately accommodated his disabilities by providing the Parent with grade two spelling lists and telling her that she thought the Child could be working on grade three by January 2020.

[20] In the September 16, 2019, at a meeting about the Child's IEP, the Parent alleges a school counsellor told her the Child could be put on a psychoeducational assessment waitlist, but the Child would not be a priority for getting an assessment. The Parent alleges the School District's failure to prioritize the Child for a psychoeducational assessment was an inappropriate response to his disability.

[21] On November 22, 2019, a teacher informed the Parent that testing on the Child revealed he was reading independently at grade one level.

[22] On January 16, 2020, the school counsellor emailed the Parent with information about private psychoeducational assessment clinics. The counsellor also told the Parent what information she should convey to the clinics. The Parent states that she made efforts to book an assessment privately in the weeks that followed because she was becoming increasingly concerned about the Child and felt the school was failing to appropriately accommodate his disabilities by not having him assessed.

[23] On February 28, 2020, the Parent emailed the Child's teacher after noting an increase in his reversing letters in his writing on a test. The teacher acknowledged the reversals but was unsure if it was new behaviour or fatigued-related. The Parent alleges the School District's failure to appropriately address the Child's letter reversals was inappropriate accommodation of his disabilities.

[24] A psychoeducational assessment was booked for the Child on March 27, 2020. However, it was ultimately cancelled because of pandemic restrictions.

[25] In mid 2020, at the end of grade four, the Parent says that she realized the extent of the Child's reading struggles as he could not read instructions or complete any online school without her providing him with extensive one-to-one support. She alleges his reading skills were much lower than the School District had previously indicated. At that point the Parent says she began doing in-depth research on dyslexia and other disabilities pertaining to reading. She then decided to pay for him to attend tutoring with literacy specialists outside of school.

[26] In the fall of 2020, the Parent reports the Child's grade five tutor recommended he attend a psychoeducational assessment.

[27] The Parent says she then scheduled and paid for a psychoeducational assessment. The assessment was conducted by a registered psychologist, who prepared a written report dated October 27, 2020. The Parent says that in the report, the registered psychologist diagnosed the Child with dyslexia, dyspraxia, and ADHD. The psychologist further reported that the Child had excellent reasoning skills in both verbal and visual areas and was bright. However, the psychologist assessed the Child as being very vulnerable in reading and found his written work restricted by handwriting and spelling difficulties. The psychologist recommended that the Child be taught to eventually use a laptop. The psychologist suggested that learning how to type be seen as a priority as it would take the Child some time to become competent in typing. The psychologist opined that it would take a great deal of time and support to improve the Child's written work. The psychologist further opined that the Child had problems with mathematics and would similarly need a great deal of support and more time on the subject. In view of the Child's challenges with literacy, reading, writing, fluency, spelling, and attention the

psychologist concluded that the Child qualified for an individualized education program with a learning disability designation. The psychologist established six top priorities for the Child's education plan that included additional and specialist support in reading, the development of automaticity in spelling and spelling rules, instruction and support to develop written work, the development of keyboard skills, a great deal of additional support with mathematics and close monitoring of his attention and self-esteem.

[28] The Parent says she provided a copy of the psychologist's report to the School District. On November 4, 2020, the Parent met with the School District to discuss changes to the IEP considering the recommendations in the report.

[29] It appears the Parent followed up with an email to the School District that same day. In her email, the Parent questioned whether the proposed changes to the IEP aligned with the recommendations in the psychologist's report. In particular, the Parent noted that she was paying \$930 a month for tutoring to address the Child's needs outside of school and it appeared that the School District was going to provide very little one-on-one support. The Parent alleges the School District inappropriately continued to focus on the Child's anxiety, despite it now being clear from the psychologist's report that treating this issue as a disorder was not appropriate.

[30] On November 5, 2020, the school principal asked the Parent whether she wished to have the Child engage in math programs and keyboarding skills development instead of music. At that time the school principal also clarified that a case manager would work one-on-one with the Child as needed but recognized that person did not have the training required to instruct him in the method recommended in the psychologist's report. The Parent alleges the School District's refusal to train the child with an instructor with proper training was an inappropriate accommodation of his disabilities.

[31] On November 5, 2020, the Parent's email replying to the school principal informed that she did not want the Child in generic group pull out sessions, such as the guided reading or "LLI sessions", which had been his only interventions to date. She further stated that she did not want teachers using techniques that were not indicated or evidence based for children

specifically diagnosed with dyslexia. The Parent identified the sole employee in the School District with the necessary skills to administer the required Orton Gillingham [OG] method. She argued it was unfair to ask another employee untrained in that method to teach it. The Parent also felt it was inappropriate for the Child to be subjected to other methods of instruction. Overall, she did not feel confident that any of the details had been worked out in the IEP to specifically meet the Child's needs. The Parent stated that she felt incredibly rushed during a less than one hour meeting about the plan for the Child related to the new information and the complexity of the situation. She worried about several educators being involved who did not have training for children with the Child's learning disabilities and processing challenges. The Parent was further concerned that the one person with OG training in the School District was not directly meeting with the Child. She concluded by questioning whether the School District was meeting the Child's educational needs.

[32] On November 25, 2020, the Parent emailed the Child's teacher to complain about him being sent home with simple two-digit math sheet problems despite being able to do more complicated work. The Parent accused the teacher of inappropriately telling the Child that he was getting simple math work because his mother had told the school that was all he could do. Once again, the Parent is alleging the School District was failing to satisfy its duty to accommodate by sending home inappropriate work for the Child and blaming the Parent for the error.

[33] By December 2020, the Parent says she was considering whether to withdraw the Child from the School District and place him in a private school that could provide more support for his learning disabilities.

[34] On December 2, 2020, the Parent wrote to the School District seeking further information before deciding whether to withdraw the Child from the public school system. First, she noted that the Child's IEP relied heavily on private tutoring that was occurring three days a week and asked what the School District would do if she no longer paid for that tutoring. She next asked the School District to commit to having the one employee trained in the OG method work with him the entire school year. She also asked whether the Child's hours with the OG trained employee would be increased and whether such involvement would continue

next year when he entered middle school. The Parent also sought a commitment for the School District to update the Child's psychoeducational assessment regularly. She asked the School District for any examples of children with similar disabilities being managed by them and whether such children successfully graduated. Finally, the Parent noted her concern that as of grade three the School District had already started to consider the Child as not being a candidate for graduation with a high school diploma.

[35] One December 3, 2020, the School District responded by email. The School District advised that it was not able to confirm that the one-on-one support provided would continue throughout the school year. The School District further advised that it could not confirm whether any further psychoeducational assessments would occur but noted that the team at the school would consult with her about that next year. Finally, the School District assured the Parent that no decisions had been made about the Child graduating from high school.

[36] On December 3, 2020, the Parent informed the School District that she was withdrawing the Child after receiving what she felt was a general and unsatisfactory response to her inquiry. She also felt the response did not address all her questions.

[37] In January 2021, the Parent says that the Child was enrolled in a private school equipped to meet his education needs. She says that at the new school, the Child received 45 minutes of OG tutoring at the new school every day with positive effects. By the time her complaint was filed in November 2021, she described him as a "different child" who did not complain about going to school and did not get headaches and have an upset stomach or diarrhea. The Parent says the Child was learning at grade level and was now being given the opportunity to be successful.

III ANALYSIS AND DECISION

[38] Section 22 of the *Code* provides:

- (1) A complaint must be filed within one year of the alleged contravention.
- (2) If a continuing contravention is alleged in a complaint, the complaint must be filed within one year of the last alleged instance of the contravention.

- (3) If a complaint is filed after the expiration of the time limit referred to in subsection (1) or (2), a member or panel may accept all or part of the complaint if the member or panel determines that:
- (a) it is in the public interest to accept the complaint, and
 - (b) no substantial prejudice will result to any person because of the delay.

[39] The time limit set out in s. 22 of the *Code* is a substantive provision which is intended to ensure that complainants pursue their human rights remedies diligently and to allow respondents the comfort of performing their activities without the possibility of a dated complaint: *Chartier v. School District No. 62*, 2003 BCHRT 39 at para. 12.

[40] The complaint was filed on November 19, 2021. To comply with the one-year time limit under s. 22(1) of the *Code*, the last alleged act of discrimination had to occur on or after November 19, 2020.

[41] A complaint is filed in time if the last allegation of discrimination happened within one year, and older allegations are part of a “continuing contravention”: *Code*, s. 22(2); *School District v. Parent obo the Child*, 2018 BCCA 136 at para. 68. A continuing contravention is “a succession or repetition of separate acts of discrimination of the same character” that could be considered separate contraventions of the *Code*, and “not merely one act of discrimination which may have continuing effects or consequences”: *Chen v. Surrey (City)*, 2015 BCCA 57 at para. 23; *School District* at para. 50.

[42] The assessment of whether discrete allegations are a continuing contravention is a “fact specific one which will depend very much on the individual circumstances of each case”: *Dickson v. Vancouver Island Human Rights Coalition*, 2005 BCHRT 209 at para. 17. A relevant consideration is whether there are significant gaps between the allegations: *Dickson* at paras. 16-17. Whether or not a gap is significant will be assessed contextually, considering the length itself and any explanations for the gap: *Reynolds v Overwaitea Food Group*, 2013 BCHRT 67, at para. 28. A significant, unexplained, gap in time will weigh against finding a continuing contravention: *Bjorklund v. BC Ministry of Public Safety and Solicitor General*, 2018 BCHRT 204 at para. 14.

[43] The Parent submits that the complaint alleges a continuing contravention of the *Code* that is anchored in several timely incidents of alleged discrimination. She described the first timely allegation as occurring on November 25, 2020, when the math sheets were sent home. The second timely incident occurred when the School District's failed to provide adequate accommodations for the Child's learning disabilities in requested changes to the IEP in early December 2020. The Parent further notes that it was obvious that the Child had a frequent, systemic, and particularized reading issue that went beyond anxiety symptoms. She submits that she sought accommodations related to reading early and throughout the Child's attendance period at the school and references multiple events over the years where the School District should have made further inquiries about the Child's disability and failed to do so. The Parent argues these events can stand alone as separate contraventions of the *Code* and are of the same character. She submits there are no significant gaps between allegations in this case as the school's failure to accommodate the Child's disabilities was ongoing and affected him every day. In her view, each day the Child attended school between September 2015 and December 2020 was a separate incident of discrimination.

[44] The School District argues the math sheet incident was late pled and should not be permitted to bring in the late filed events in this case as a continuing contravention. Alternatively, the School District argues that the event involving mathematics is not an arguable contravention as it did not involve reading, writing and verbal understanding, which is core to this complaint about failing to accommodate the Child's disabilities. The School District further argues that the complaint as initially outlined by the Parent is about the failure to provide appropriate or adequate educational resources. In its view, the Parent is now trying to characterize the complaint as the School District failing to make further inquiries into the Child's learning disabilities, despite multiple events that should have triggered it to do so. In either case, the School District submits these same incidents should have prompted the Parent to file the complaint much sooner, and certainly well before a year after removing the Child from the School District. It cautions against accepting historical allegations of discrimination going back five years from the time of filing and after the Child left the school altogether. To allow this would "sweep in" allegations that would otherwise be far outside the *Code's* time

limits. The School District submits a complainant should file their complaint as soon as possible so the Tribunal can take remedial steps sooner. This also ensures that the complaint moves quickly through the process so that witnesses are available, and memories are fresh. For the School District, accepting allegations for filing that are five years old fails to meet either of these laudable goals. In this case, there were many instances where the Parent could have filed a complaint to resolve the matter, but she did not do that.

1. *Does the complaint contain an allegation of discrimination within the one-year time limit?*

[45] I have first considered whether the complaint contains any allegations of discrimination within the one-year time limit. After reviewing the Parent's complaint information, I am satisfied that she set out timely allegations of discrimination related to the School District's failure to accommodate the Child's learning disabilities: *Moore v. British Columbia (Education)*, 2012 SCC 61 at para 33. In this case, the Parent must show that the Complaint alleges facts that, if proven, could establish that the Child has a mental disability, experienced an adverse impact with respect to the services provided by the School District; and that the disability was a factor in the alleged adverse impacts.

[46] I am satisfied that the allegations about the mathematics sheet incident set out a timely, arguable contravention of the *Code*. On November 25, 2020, the Parent alleges the School District sent the child home with mathematics exercises that were an inappropriate accommodation of his disability. Further harm occurred where the teacher providing this work allegedly told the Child that the accommodation was based on the Parent's view that his mathematics skills were quite limited. With respect to this allegation, it is clear the Child has a disability and experienced an adverse impact as his confidence in performing math was undermined, and his disability was a factor in the alleged harms. I also note that this incident was set out in the initial complaint form but appreciate that the date when this occurred was not provided until later by the Parent in her submissions for this application.

[47] I am also satisfied that the allegations about revising the Child's IEP in early December 2020 set out a timely, arguable contravention of the *Code*. Here, the Parent questioned the

steps the School District was willing to take, including the amount of OG tutoring it would provide and its commitment to regularly update his psychoeducational assessment. In my view, the School District's alleged failure to deliver the necessary accommodations as requested by the Parent, contains the necessary elements of an allegation of discrimination for the purposes of s. 27(1)(b) of the *Code*. The Complaint alleges that the Child has a disability and was in a services relationship with the School District. It also alleges that harms occurred when the School District failed to accommodate him appropriately by refusing to make changes to the IEP as recommended in the psychoeducational assessment such that he would not receive a proper education, and the Child's disability was a factor in these harms.

2. *Has the parent put forward other allegations of discrimination that form part of a continuing contravention, and if so, how far back does the alleged contravention go?*

[48] I now turn to the question of whether the parent has put forward other allegations of discrimination that form part of a continuing contravention, and if so, how far back does the alleged contravention go.

[49] After reviewing the information on file, I have further determined that there is a succession of separate acts of discrimination of the same character that are separate contraventions of the *Code* extending back to the spring of 2016. I address each allegation in turn.

[50] The Complaint alleges that on April 4, 2016, the Parent emailed the Child's kindergarten teacher with his reports that he felt rushed when doing work at school, and despite his best efforts he felt he was too slow in completing tasks. The Parent asked the teacher if there was anything that could be done about this problem. The teacher responded with an acknowledgement that the Child did take his time with his work and appears to suggest that the Parent should reassure the Child that he could take time and not be so hard on himself. From my review of this event, I am satisfied that the Complaint sets out an allegation of discrimination where the Child accessing educational services experienced harms because the School District failed to accommodate the Child and did not meet his educational needs by only telling the Parent to tell the Child not to not rush or be too hard on himself. The harm incurred

by taking this action only was the Child not receiving a proper education. I am further satisfied the Complaint sets out an allegation that the School District failed to make sufficient inquiries into the nature and extent of the Child's disability-related needs in response to the Parent's concerns. In my view, this inaction caused harm where the School District failed to discover Child's learning disabilities such that he could then be provided with appropriate accommodations to prevent him falling behind. In my view, the Complaint alleges that the Child's disability was a factor in the harms alleged.

[51] The Complaint alleges that in November 2016, the School District's response to the Child's reading difficulties was to send home alphabet cards and provide video links for him to work on sounding out letters and creating simple words. From my review of this event, I am satisfied that the Complaint sets out allegations of discrimination where the School District failed to accommodate the Child by addressing his learning disability needs in this manner. I am further satisfied the Complaint sets out an allegation that the School District failed to make sufficient inquiries into the nature and extent of the Child's disability-related needs as opposed to sending home alphabet cards and video links to address his needs. In my view, the Complaint alleges that the Child's disability was a factor in the harms alleged. In my view, the Complaint alleges that the Child's disability was a factor in the harms alleged.

[52] The Complaint alleges that in the fall of 2017, the School District addressed the Child's ongoing reading problems by giving him sight cards to take home and providing him with some one-on-one reading support. At this time, the Parent noted her concerns that the Child was merely memorizing the cards and not actually able to spell the words. She also observed that he was guessing words based on pictures. I am satisfied that the Complaint sets out allegations of discrimination where the School District failed to accommodate the Child by addressing his learning disability needs in this manner. I am further satisfied the Complaint sets out an allegation that the School District failed to make sufficient inquiries into the nature and extent of the Child's disability-related needs as opposed to sending home sight cards and providing some one-on-one reading support. In my view, the Complaint alleges that the Child's disability was a factor in the harms alleged.

[53] The Complaint alleges that in August 2018, the School District's response to the Parent's concern that the Child might be dyslexic as he continued to struggle in school was to assure her that he just needed to keep practicing. I am satisfied that the Complaint sets out allegations of discrimination where the School District failed to accommodate the Child by addressing his learning disability needs in this manner in response to Parent's concerns. I am further satisfied the Complaint sets out an allegation that the School District failed to make sufficient inquiries into the nature and extent of the Child's disability-related needs as opposed to staying the course with Child despite ongoing problems and the Parent highlighting the possibility that he could be dyslexic. Once again, I find the Child's disability was a factor in the harms alleged.

[54] The Complaint alleges that In the fall of 2018, the School District's response to the Child's ongoing learning struggles was to conduct a functional behavioural assessment and place him in a literacy intervention group. I am satisfied that the Complaint sets out allegations of discrimination where the School District failed to accommodate the Child by addressing his learning disability needs by focusing on the behavioural components and not his disabilities. I am further satisfied the Complaint sets out an allegation that the School District failed to make the appropriate inquiry, conducting a psychoeducational assessment instead of a behavioural assessment, into the nature and extent of the Child's disability-related needs. Again, failing to accommodate the child after a proper assessment is alleged to have harmed him by not providing a proper education. I find the Child's disability was a factor in the harms alleged.

[55] The Complaint alleges that in December 2018, the School District created its first IEP for the Child. I am satisfied that the Complaint sets out allegations of discrimination where the School District failed to accommodate the Child by addressing his learning disability needs with an IEP that focused on the behavioural components and provided ineffectual learning supports not indicated in the later psychoeducational assessment. Again, the School District is alleged to have failed to make the appropriate inquiry into the nature and extent of the Child's disability-related needs. It allegedly failed to accommodate the child after a proper assessment resulting in the harms related to not receiving a proper education. I find the Child's disability was a factor in these harms.

[56] The Complaint alleges that in June 2019, the School District updated the IEP with minimal changes and sent worksheets home with the Child to do over the summer break that were allegedly beyond his capabilities. I am satisfied that the Complaint sets out allegations of discrimination where the School District failed to accommodate the Child by addressing his learning disability needs with a revised IEP that has the same issues as the first IEP. A further allegation is set out concerning sending home inappropriate worksheets over the summer. Once again, the School District is alleged to have failed to make the appropriate inquiry into the nature and extent of the Child's disability-related needs. It allegedly harmed the Child by not providing him with a proper education. I find the Child's disability was a factor in the harms alleged.

[57] The Complaint alleges that in September 2019, the Child's grade four teacher admitted she was unaware of him having an IEP and provided him with grade two spelling lists work as an accommodation of his disability. I am satisfied that the Complaint sets out allegations of discrimination where the School District failed to accommodate the Child by addressing his learning disability needs by sending home grade two spelling lists for him to work on. Once again, the School District is alleged to have failed to make the appropriate inquiry into the nature and extent of the Child's disability-related needs. It allegedly harmed the Child by not providing a proper education. I find the Child's disability was a factor in the harms alleged.

[58] The Complaint alleges in February 2020, the School District's lack of response to the Parent's concern that the Child was reversing letters on his written tests is an allegation of discrimination. I am satisfied that the Complaint sets out allegations of discrimination where the School District failed to accommodate the Child by addressing his learning disability needs in the face of dyslexia symptoms. Once again, the School District is alleged to have failed to make the appropriate inquiry into the nature and extent of the Child's disability-related needs. It allegedly harmed the Child by not providing a proper education. I find the Child's disability was a factor in the harms alleged.

[59] The Complaint alleges on November 4, 2020, that the revised IEP implementing the October 27, 2020, psychoeducational report findings is an allegation of discrimination where it relied on the Parent to organize and pay for the Child's OG tutoring and inappropriately

continued to focus on treating his anxiety. I am satisfied that the Complaint sets out allegations of discrimination where the School District failed to accommodate the Child by addressing his learning disability needs with a revised IEP not properly guided by the psychoeducational assessment resulting in the Child not receiving a proper education. I find the Child's disability was a factor in the harms alleged.

[60] The Complaint alleges on November 5, 2020, that the school principal was unwilling to guarantee that the Child would receive tutoring from someone trained in OG tutoring is an allegation of discrimination for the purposes of this decision. I am satisfied that the Complaint sets out allegations of discrimination where the School District failed to accommodate the Child by committing to provide him with an appropriately trained tutor necessary to meet his learning disability needs. This resulted in the Child not receiving a proper education. I find the Child's disability was a factor in the harms alleged.

[61] To summarize, the materials before me set out a series of discrete allegations of discrimination incidents involving the School District's repeated failures to appropriately accommodate the Child's disability over the five years that he attended school within the School District. These incidents involved the trial of various inappropriate intervention activities, inappropriate IEPs and an inappropriate assessment. All these actions attempting to address the Child's learning disabilities allegedly resulted in harms related to the Child not receiving a proper education. Further, for much of the period in question, the School District failed to make the appropriate inquiry into the nature and extent of the Child's disability-related needs by way of a psychoeducational assessment.

[62] In determining the failure to inquire is an allegation of discrimination in this case, I disagree with the School District that the Parent did not raise this allegation in her initial complaint form information. In my review of the form, I note the Parent refers to the School District's inaction in relation to obtaining an assessment related to the Child's learning disabilities. Her complaint form sets out her wonder as to why the School District dismissed her concerns about learning disabilities and told her obtaining a psychoeducational assessment was not a priority.

[63] From my review of the nature of the allegations of discrimination in this case, I am satisfied that they are of a similar nature. While some of the allegations involve taking measures that did not meet the Child's needs and others involve not doing enough to assess his disabilities and plan appropriately to address them, in my view all the allegations are related to responding appropriately to the Child's mental disabilities to ensure he could access the services of the School District. In the circumstances of this case, I find all the dealings of the School District related to the Child's learning disabilities include allegations of discrimination of a similar nature.

[64] In my analysis to whether a continuing contravention of the *Code* occurred under s. 22(2), I have also considered the existence gaps in time in allegations. The allegations in this case occurred over approximately five years and contain some fairly lengthy gaps, which if not explained, can potentially weigh against accepting the entirety of the Child's attendance at the School District as part of a timely complaint tethered to the in-time events. In this case, however, I find a pattern of allegations related to the School District's attempt to accommodate the Child occurring mainly in the fall term of each year he attended school. There are also a few events in the spring term of some years. While months passed between the allegations in this case, the gaps are explainable in that attempts to accommodate mostly corresponded with starting new grades with new teachers. Overall, the allegations in this case fit with the rhythm of the school year cycle and I am satisfied the gaps are explained as different attempts at accommodation were made over the course of a school term and year.

[65] In concluding there were no significant gaps in this case, I have considered the Parent's submissions and evidence indicating she was actively engaged in the Child's education during his time out of school over the years. For example, she participated extensively in the take home activities prescribed by the School District while actively pursuing guidance from his teachers, the school counsellor, and the principal. In my view, the Parent remained very much engaged in the accommodation process throughout the years and this lessens the significance of any gaps between the discrete instances of discrimination outlined above. As an active participant in the School District's ongoing accommodation of the Child's learning disabilities, I see less significance in the gaps of months between the discrete allegations. While it is possible

to say the Parent had numerous opportunities to file a complaint, the information before me indicates that she was actively engaged as a participant in the accommodation process between events where the issue of accommodation arose, which lessens the significance of the gaps in this case.

[66] Having found this complaint can proceed under s. 22(2) of the *Code*, it is unnecessary for me to determine whether it is in the public interest to allow his complaint to proceed, and no substantial prejudice will result to any person because of the delay pursuant to *Code* s. 22(3).

IV CONCLUSION

[67] For these reasons, the complaint is accepted for filing as it alleges a continuing contravention of the *Code*.

Steven Adamson
Tribunal Member