Information and Privacy Commissioner,
Ontario, Canada

Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-2853

Appeal MA11-559

Hamilton-Wentworth District School Board

March 7, 2013

Summary: The board received a request from the parent of a child for that child's Ontario Student Records (OSR). The board denied access to the records on the basis that the appellant had neither custody of nor access to his child and was not, therefore, entitled to access the records. The appellant took the position that section 266(3) of the *Education Act*, in conjunction with section 14(1)(d) (disclosure under another Act) of the *Act*, entitled him to have access to his child's OSR.

This order finds that the right to examine a record set out in section 266(3) of the *Education Act* does not extend to a parent who does not have access rights to their child, and the board's decision to deny access to the records is upheld.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 14(1)(d), 54(c); *Education Act,* R.S.O. 1990, c. E.2, as amended, sections 1(1) (definition of guardian), 266(2), 266(3) and 266(11).

Orders and Investigation Reports Considered: Orders M-292, MO-2030.

Cases Considered: *R. v Goulis* (1981), 125 DLR (3d) 137; *ATCO Gas & Pipelines Ltd v. Alberta,* 2006 SCC 4; *Nurse v. Kawartha Pine Ridge District School Board,* 17 C.P.C. (6th) 51 (Ont. SCJ (Master).

OVERVIEW:

[1] The Hamilton-Wentworth District School Board (the board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) which read as follows:

> As per section 266(3) of the *Education Act*, I would like a copy of my son's [full name] [Ontario Student Record (OSR)].

[2] The request also identified the specific high school which the son attended.

[3] In response the request, the board issued a decision in which it denied access to the responsive records on the basis of the mandatory exemption in section 14(1) (personal privacy) of the *Act*, with reference to the presumption in section 14(3)(d). The board also referred to section 54(c) of the *Act* which states:

> Any right or power conferred on an individual by this Act may be exercised,
>
> > if the individual is less than sixteen years of age, by a person who has lawful custody of the individual.

[4] The decision letter noted that section 54(c) refers to a person who has "lawful custody" of an individual who is less than sixteen years of age, and then stated:

> It is our understanding that you are not the custodial parent in respect of your son and, moreover, your son is 15 years of age. Accordingly, only your son's custodial parent or guardian may exercise the rights or powers provided for in [the *Act*] in respect of his personal information.

[5] The decision letter also referred to section 14(1)(d) of the *Act* and section 266(3) of the *Education Act* and stated that the board was taking the position that these sections did not provide the appellant with a right of access to the requested record.

[6] The appellant appealed the board's decision.

[7] During mediation, the board indicated that it may reconsider its decision if the appellant provided evidence that he had access rights to the child in question. The appellant did not provide any such evidence, and maintained his position that section 266(3) of the *Education Act* gives him the right of access to his son's school records, as he is the child's parent.

[8] Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process, where an adjudicator conducts an inquiry under the *Act*. I sent a Notice of Inquiry identifying the facts and issues in this appeal to the board, initially, and received representations in response. I then sent the Notice of Inquiry, along with a complete copy of the representations of the board, to the appellant, who also provided representations to me.

[9] In addition, I noted that some of the records contained in the child's OSR may contain the personal information of the appellant, and invited the parties to address the possible application of section 38(b) (discretion to refuse requester's own information) in this appeal.

RECORDS:

[10] The records at issue are the Ontario Student Records (OSR) of the requester's son.

PRELIMINARY MATTERS:

Personal information

[11] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1), and the parties were invited to address this issue.

[12] Both the board and appellant agree that the records contain the personal information of the appellant's son. I agree, and find that the records contain the personal information of the son under paragraphs (a), (b), (c), (d), (g) and (h) of the definition of personal information in section 2(1) of the *Act*.

[13] The board acknowledges that some of the documents contain the personal information of the appellant. I have reviewed the records and conclude that some of them contain the appellant's personal information under paragraphs (a), (d) and (h) of the definition. I also find that some of the records also contain the personal information of other identifiable individuals.

[14] However, in light of my findings below, it is not necessary for me to identify exactly which of the documents contained in the son's OSR also contain the personal information of the appellant and/or other identifiable individuals.

Personal Privacy - sections 14(1) and 38(b)

General Principles

[15] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

[16] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

[17] Under section 14, where a record contains personal information only of an individual other than the requester, the institution must refuse to disclose that information unless disclosure would not constitute an "unjustified invasion of personal privacy".

[18] In both these situations, sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold is met.

[19] Sections 14(1)(a) to (e) are exceptions to the personal privacy exemptions. If the information fits within any of paragraphs (a) to (e) of section 14(1), it is not exempt from disclosure under sections 14(1) or 38(b).

[20] The representations of both the board and the appellant focus primarily on the exception in section 14(1)(d). The appellant accepts that if the exception in section 14(1)(d) does not apply to his son's OSR, the presumption in section 14(3)(d) applies, and he would not be entitled to those records. The appellant also does not address the possibility of accessing some of the records under section 38(b) if they contain his own personal information, nor does he appear to have an interest in accessing only those records.

[21] Accordingly, the primary issue in this appeal is whether or not the exception in section 14(1)(d) applies to the records at issue. I address that issue below.

DISCUSSION:

Section 14(1)(d): disclosure under another Act

[22] Section 14(1)(d) states:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

> under an Act of Ontario or Canada that expressly authorizes the disclosure;

[23] In order for section 14(1)(d) to apply, there must either be specific authorization in the statute for the disclosure of the specific type of personal information at issue, or there must be a general reference to the possibility of such disclosure in the statute together with a specific reference to the type of personal information to be disclosed in the regulation.[1]

[24] The appellant takes the position that, because he is the parent of the child, section 266(3) of the *Education Act* expressly authorizes the disclosure of his son's OSR to him, and therefore section 14(1)(d) of the *Act* applies. Section 266(3) of the *Education Act* reads:

> A pupil, and his or her parent or guardian where the pupil is a minor, is entitled to examine the record of such pupil.

[25] The board takes the position that section 266(3) of the *Education Act* does not apply to the appellant because, although the appellant is technically the "parent" of the child, he does not have custody or access rights to the child, and he is therefore not a "parent" for the purpose of section 266(3).

[26] Although the appellant was invited to provide evidence that he has either custody or access rights to the child, he did not do so. In the absence of such evidence, I will proceed with this appeal on the basis that the appellant has neither custody of nor access to the child. As a result, in this appeal I must determine whether section 266(3) of the *Education Act* expressly authorizes the disclosure of a child's record to a non-custodial, non-access parent.

The board's representations

[27] The board takes the position that section 266(3) of the *Education Act* does not expressly authorize the disclosure of a child's personal information to a non-custodial, non-access parent. It refers to sections 266(2), (3) and (11) of the *Education Act*, the relevant portions of which read:

> *Pupil records privileged*
>
> (2) A record is privileged for the information and use of supervisory officers and the principal and teachers of the school for the improvement of instruction of the pupil, and such record,

[1] Orders M-292, MO-2030.

> (a) subject to subsections … (3), … is not available to any other person; …
>
> without the written permission of the parent or guardian of the pupil or, where the pupil is an adult, the written permission of the pupil.
>
> *Right of parent and pupil*
>
> (3) A pupil and his or her parent or guardian where the pupil is a minor, is entitled to examine the record of such pupil.
>
> *Definition*
>
> (11) For the purposes of this section,
>
> "guardian" includes a person, society or corporation who or that has custody of a pupil.

[28] The board then states that, although the *Education Act* does not expressly define "parent," the word "guardian" is defined in the *Education Act* as someone who has custody of a child, other than a parent. It then refers to the principles of statutory interpretation and, particularly, the maxim of interpretation referred to as *noscitur a sociis*, (meaning "know a thing by its associates"). After referring to an Ontario Court of Appeal case which refers to this maxim,[2] the board states:

> Applying the foregoing principles to section 266(3) of the *Education Act*, the operative word which is coupled together with the word "parent" is the word "guardian". The two words are clearly susceptible to analogous meanings. In general, where a minor is involved, both words connote a protective (and sometimes biological) relationship which may involve certain legal rights and duties. Hence, according to *noscitur a sociis*, it is reasonable to conclude that both "guardian" and "parent" were used by the legislature to connote a similar meaning. Because the legislature saw fit to define "guardian" for the purposes of section 266 as meaning "custodial guardian", the word "parent" as used in that section should likewise be understood as taking its colour from that particular meaning. In turn, section 266(3) should be interpreted as failing to extend to a non-custodial parent the right to review student records.

[2] *R v Goulis* (1981), 125 DLR (3d) 137.

[29] The board submits that this interpretation of section 266(3) of the *Education Act* is reasonable because it is "unlikely that the legislature contemplated that a non-custodial parent with no rights of access to his or her child would be entitled to receive access to the child's Ontario Student Record." It also refers to certain provisions of Ontario's *Children's Law Reform Act* and the Federal *Divorce Act* that allow information about the education of a child to be given to parents with *access* rights to a child. The board also states that, because the appellant has provided no evidence of either custodial or access rights to the child, neither section 266(3) of the *Education Act*, nor any other Act of Ontario or Canada, expressly authorizes the disclosure of the record for the purposes of section 14(1)(d).

The appellant's representations

[30] The appellant provides extensive representations in support of his position that section 266(3) of the *Education Act*, in conjunction with section 14(1)(d) of the *Act*, entitles him to have access to his son's OSR records. His representations can be summarized as follows:

- The *Education Act* contains two definitions of the word "guardian," with only the general definition in section 1 referring to the phrase "other than the parent of the child." This phrase is not included in the definition of "guardian" which applies to section 266(3) and is found in section 266(11). Therefore, in referring to this phrase, the board applied the wrong definition of the word "guardian."

- If the board's interpretation is accepted, the use of the word "parent" in section 266(3) would be redundant, as the word "guardian" would include a custodial parent (ie: a "person, society or corporation who or that has custody of a pupil"). The board ought not to be able to rely on the position that the legislation is incorrectly written and contains redundancies in order to support its position.

- The board acknowledges that the appellant is the parent of the child, but denies him access to the record because he is a "non-custodial parent" so that section 266(3) does not apply. This interpretation improperly restricts the meaning of the word "parent" to a certain type of parent, and would mean that the appellant is not the child's parent, and that he no longer has a son. The appellant states that "no amount of circuitous semantics" can alter the fact that he is the child's parent.

- It is not absurd to allow the appellant access to his son's OSR if section 266(3) of the *Education Act* entitles him to access.

- Both parents (custodial or not) are responsible for paying child support, and the Ministry of the Attorney General recognizes that a parent who is a non-custodial parent is still defined as a "parent" responsible for supporting their children.

- It would be "cruel and unusual" for a parent to be defined as such in terms of having to pay child support, but not recognized as the parent under the *Education Act* and not entitled to access their child's OSR.

- The board's position on the definition of "parent" would require all parents to prove a negative. Even though section 266(3) gives parents the right of access to their child's OSR, parents must also prove that there is no specific order that says that this right has been revoked – this would be absurd.

- Section 266(3) identifies three categories of people who may have access to the OSR: pupil, parent, and person with custody. As the parent and father of the pupil, the appellant falls into one of those three categories. The spirit of the legislature supports the position that parents should be entitled to their own child's reports.

Analysis and findings

[31] As identified above, in the circumstances of this appeal and in the absence of any evidence that the appellant has either custody of or access to his child, I will review whether the term "parent" in section 266(3) of the *Education Act* includes a non-custodial, non-access parent.

[32] In interpreting the word "parent" as it appears in section 266(3), the modern rule of statutory interpretation requires that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."[3]

[33] When section 266(3) is considered in the context of the *Education Act* and in light of the scheme and object of that Act, I find that the Ontario Legislature did not intend to give a non-access, non-custodial parent the right to examine his or her child's OSR. In coming to this conclusion, I have conducted the following: (a) a contextual analysis of the wording of section 266(3); (b) an analysis of the objectives of the *Education Act* and the intentions of Parliament; and (c) a review of the proposed interpretation to ensure compliance with the modern rule of statutory interpretation.

a) Contextual Analysis

[34] Individual terms in legislation are not to be interpreted in isolation. Although the appellant argues that the term "parent" should be given its ordinary meaning, the courts have confirmed that, when deciding the particular meaning of a word found in a

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[3] *Canada (Information Commissioner) v. Canada (Minister of National Defence),* 2011 SCC 25, at para. 27; *Re Rizzo & Rizzo Shoes Ltd.* [1998] 1 S.C.R. 27, at para. 21, citing Elmer A. Driedger, *Construction of Statutes,* 2nd ed. (Toronto: Butterworths, 1983), at p. 87.

statute, consideration must be given to the context in which the word appears or the scheme and object of the Act in which it is found. As stated by the Supreme Court of Canada in *ATCO Gas & Pipelines Ltd v. Alberta*:

> … the grammatical and ordinary sense of a section is not determinative and does not constitute the end of the inquiry. The Court is obliged to consider the total context of the provisions to be interpreted, no matter how plain the disposition may seem upon initial reading…[4]

[35] As a result, I have considered the word "parent" both within the *Education Act* as a whole and specifically within section 266(3).

1) The meaning of the word "parent" in the Education Act

i. Same Word, Same Meaning

[36] It is presumed that in drafting legislation, care is taken to ensure consistency in the use of language within a statute.[5] Giving the same words the same meaning throughout a statute is a basic principle of statutory interpretation.[6]

[37] The word "parent" appears many times in the *Education Act*, but that Act does not provide a global definition of the word. There are, however, localized definitions of the word "parent" – applicable for that part only. For example, Part IX.1 of the *Education Act* (which deals with extended day programs and third party programs) states that "parent" in that part "includes a person who has lawful custody of a child."[7]

[38] The proper meaning of "parent" in section 266(3) should presumptively be a meaning that can also be applied to the term in other sections of the *Education Act*. From a review of other sections of that Act which use the term "parent," it is apparent that some sections can only reasonably support a finding that the word "parent" means custodial parent.[8] For example, section 21 requires that a "parent or guardian" ensure that children less than 16 years of age attend school.[9] It is implausible that the Legislature intended to impose such an obligation on a parent who has neither access to nor custody of the child.

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[4] 2006 SCC 4 at para 48.
[5] Ruth Sullivan, *Construction of Statutes*, 5th ed (Markham: LexisNexis Canada, 2008) at 214-215.
[6] *R. v. Zeolkowski*, [1989] 1 S.C.R. 1378 at 1387; *R. v. Charette*, 2009 ONCA 310, para 38.
[7] See section 258 of the *Education Act*. Identical definitions of "parent" are found in Parts X.2 (section 277.15(1)) and XI.1 (section 287.3(1)) which relates to appraisals for teachers and school supervisory officers.
[8] In contrast, the *Education Act* contains no provisions that only support a finding that "parent" must include non-access or non-custodial parents.
[9] Section 21(5) of the *Education Act*: "The parent or guardian of a person who is required to attend school under this section shall cause the person to attend school as required by this section unless the person is at least 16 years old and has withdrawn from parental control."

[39] Similarly, alternative courses of instruction and religious instruction require consent of the student's "parent or guardian."[10] It is a well-accepted principle of family law that the custodial parent is responsible for the care and upbringing of the child including decisions that concern the education, religion, health and well-being of the child.[11] It is implausible that the Legislature intended to provide a non-custodial, non-access parent with the ability to make such fundamental educational decisions for his or her child.

[40] Moreover, a finding that "parent" in the *Education Act* includes a non-access, non-custodial parent would be inconsistent with other related provincial legislation, which bestow these responsibilities on custodial parents.[12]

ii. Presumption Against Tautology

[41] In his submissions, the appellant argues that if the word "parent" in section 266(3) only means custodial parent, the word is redundant because of the specific definition of "guardian" in section 266(11) which states:

> For the purposes of this section, "guardian" includes a person, society or corporation who or that has custody of a pupil.

[42] The appellant therefore argues that "parent" must represent something different than guardian and suggests "parent" be interpreted as "every parent."

[43] The appellant's argument raises one of the presumptions in the interpretation of statues called the "presumption against tautology" which states that a provision should not be interpreted in a way that would render any portion of the statute unnecessary.[13]

[44] On my review of the appellant's representations, I do not find the appellant's position persuasive. Although the presumption against tautology is frequently invoked, it is easily rebutted.[14] In my view, in the circumstances of this appeal, the presumption against tautology does not apply because the term "parent" is not redundant. The *Education Act* defines "guardian" to be "a person who has lawful custody of a child, *other than the parent* of the child."[15] [Emphasis added] Although I accept the appellant's position that it is the definition in section 266(11) which applies to section 266(3), that definition only extends the general definition of "guardian" to encompass

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[10] See sections 41(5) and 51(1) of the *Education Act*.
[11] *Young v. Young* [1993] 4 S.C.R. 3 at para 243.
[12] For example, section 106 of the *Child and Family Services Act* directs that the parent (defined in section 3(3) of that Act to be a custodial parent/guardian) consent to education and religious upbringing.
[13] *Winters v. Legal Services Society*, [1999] 3 S.C.R. 160 at para 48; *Communities Economic Development Fund v. Canadian Pickles Corp*, [1991] 3 S.C.R. 388 at para 39.
[14] Ruth Sullivan, *Construction of Statutes*, 5th ed (Markham: LexisNexis Canada, 2008) at 213.
[15] The *Education Act*, s. 1(1).

more categories of guardian for section 266. To only include "guardian" in section 266(3), as is suggested by the requester, would run counter to numerous other sections in the *Act* which refer to "parent or guardian" and could lead to confusion or misunderstanding as to the application of this section.

2) Section 266(3) – Associated Words Rule

[45] As referred to above, the Associated Words Rule (*Noscitur a Sociis*) is relied on by the board and referred to in its submissions. This rule states that a word must be interpreted as part of the provision giving it context. Section 266(3) of the *Education Act* states:

> A pupil, and his or her parent or guardian where the pupil is a minor, is entitled to examine the record of such pupil

[46] The Associated Words Rule is properly applied when two or more terms linked by "and" or "or" serve an analogous grammatical and logical function within a provision.[16] Martin JA explained the rule in *R v. Goulis* as follows:

> When two or more words which are susceptible of analogous meanings are coupled together they are understood to be used in their cognate sense. They take their colour from each other, the meaning of the more general being restricted to a sense analogous to the less general.[17]

[47] The Supreme Court of Canada accepted the rule as stated in *Goulis* and further clarified that its application may result in the scope of a broader term being limited.[18]

[48] In section 266(3), "parent" is followed by the words "or guardian." The word "parent" is, therefore, coloured by "guardian" and must be understood in relation to this term. The *Act* defines "guardian" to be "a person who has lawful custody of a child, other than the parent of the child."[19] Considering this definition, these terms share several common properties, and both denote caring for a child. In this context, therefore, I find that the word "parent" should not include a parent who has neither custody of nor access to a child.

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[16] Ruth Sullivan, *Construction of Statutes*, 5th ed (Markham: LexisNexis Canada, 2008) at 227.
[17] (1981), 33 O.R. (2d) 55 (C.A.) at para 11.
[18] *McDiarmid Lumber Ltd v. God's Lake First Nation*, [2006] 2 S.C.R. 846 at para 31.
[19] The *Education Act*, s. 1(1).

3) Considering the Statute Book

[49] A statute must be read and interpreted not only in its immediate context, but also with the whole statute book in mind.[20] As a result, a proper contextual review does not end with reviewing the words in their immediate context and the rest of the legislation in which they appear. Rather, this review should extend to "any other legislation that may cast a light on the meaning or effect of the words."[21]

[50] This analysis should, therefore, consider other legislation that may assist in properly interpreting section 266(3) of the *Act*. In this regard, I have identified three specific pieces of legislation which may cast light on the meaning or effect of the words: the *Municipal Freedom of Information and Protection of Privacy Act*, the *Children's Law Reform Act,* and the federal *Divorce Act*.

i. The *Municipal Freedom of Information and Protection of Privacy Act (the Act)*

[51] Interpreting the word "parent" in section 266(3) to exclude a non-access parent would be consistent with provisions of the *Act*. Section 54(c) of the *Act* grants certain rights (including the right to request personal information of a child less than 16 years of age) to *custodial* parents.[22] In essence, section 266(3) of the *Act* provides a simplified method for a child and his custodial parent to access the child's personal information. Interpreting "parent" in section 266(3) to not include a parent without access rights to the child would be consistent with the rights granted to a custodial parent under the *Act* to request personal information of his/her child.

ii. The *Children's Law Reform Act* and the *Divorce Act*

[52] Ontario's *CLRA*[23] and the federal *Divorce Act* provide access parents with the right to inquire about their child's health, education and welfare, unless a court order has taken away this right from a parent.

[53] Section 20(5) of the *CLRA* states:

> The entitlement to access to a child includes the right to visit with and be visited by the child and the same right as a parent to make inquiries and to be given information as to the health, education and welfare of the child.

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[20] Ruth Sullivan, *Construction of Statutes*, 5th ed (Markham: LexisNexis Canada, 2008) at 411; *R v Ulybel Enterprises Ltd.*, 2001 SCC 56 at para 30.

[21] Ruth Sullivan, *Construction of Statutes*, 5th ed (Markham: LexisNexis Canada, 2008) at 411.

[22] *MFIPPA*, s. 54 "Any right or power conferred on an individual by this Act may be exercised....(c) if the individual is less than sixteen years of age, by a person who has lawful custody of the individual."

[23] The *CLRA* would apply to parents residing in Ontario who (i) are not married or (ii) are legally separated (but not divorced).

[54] Similarly, section 16(5) of the *Divorce Act* states:

> Unless the court orders otherwise, a spouse who is granted access to a child of the marriage has the right to make inquiries, and to be given information, as to the health, education and welfare of the child.

[55] Neither the *CLRA* nor the *Divorce Act* directs that non-access parents are entitled to information about the health, education and welfare of a child. This supports a finding that the term "parent" in section 266(3) should be interpreted not to include a non-access parent.

b) The object of the Education Act and the intention of Parliament

[56] The purposes of the *Education Act* are set out in the introductory sections of that Act, and include the following three purposes:

> *Strong public education system*
>
> (1) A strong public education system is the foundation of a prosperous, caring and civil society.
>
> *Purpose of education*
>
> (2) The purpose of education is to provide students with the opportunity to realize their potential and develop into highly skilled, knowledgeable, caring citizens who contribute to their society.
>
> *Partners in education sector*
>
> (3) All partners in the education sector, including the Minister, the Ministry and the boards, have a role to play in enhancing student achievement and well-being, closing gaps in student achievement and maintaining confidence in the province's publicly funded education systems.

[57] None of these purposes supports a finding that the word "parent" in section 266(3) should include a non-access parent, who plays no role in the child's education. Nor do they provide a basis upon which to give a non-access parent access to his or her child's OSR, and in doing so encroaching on that child's privacy.

[58] The purpose of the creation of an OSR has also been considered by the Courts. In *Nurse v. Kawartha Pine Ridge District School Board* it was stated that "..the purpose for the creation and use to be made of the OSR is 'the improvement of instruction of

the pupil'."[24] Once again there is no basis to find that providing access to a child's OSR to a non-access parent would improve instruction to that child.

c) Whether the proposed interpretation complies with the modern rule of statutory interpretation

[59] To verify whether a proposed interpretation satisfies the modern rule of statutory interpretation, Sullivan has set out the following test:

> At the end of the day, after taking into account all relevant and admissible considerations, the court must adopt an interpretation that is appropriate. An appropriate interpretation is one that can be justified in terms of (a) its plausibility, that is, its compliance with the legislative text; (b) its efficacy, that is, its promotion of legislative intent; and (c) its acceptability, that is, the outcome complies with accepted legal norms; it is reasonable and just.[25]

[60] A finding that "parent" in section 266(3) does not include a non-access parent satisfies all above criteria.

i. Suggested Interpretation is Plausible

[61] The interpretation ultimately adopted must be one that the words of the text can reasonably bear.[26] The suggested interpretation that *parent* in section 266(3) does not include a non-access parent is plausible. The term is not defined in the *Education Act*. There is nothing to suggest that the term was intended to cover all parents – even parents without access rights.

[62] Additionally, finding that the word "parent" does not include a non-access parent is a "reading down" of section 266(3) to better reflect the legislative intent and relevant legal norms. This is something that is widely accepted as appropriate in statutory interpretation:

> Reading down…is a legitimate interpretive technique provided the reasons for narrowing the scope of the legislation can be justified in terms of ordinary interpretive techniques.[27]

ii. Suggested interpretation promotes the Legislature's Intent

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[24] *Nurse v. Kawartha Pine Ridge District School Board,* 17 C.P.C. (6th) 51 (Ont. SCJ (Master)) at para. 11.
[25] Ruth Sullivan, *Construction of Statutes*, 5th ed (Markham: LexisNexis Canada, 2008) at 3.
[26] Ruth Sullivan, *Construction of Statutes*, 5th ed (Markham: LexisNexis Canada, 2008) at 163.
[27] Ruth Sullivan, *Construction of Statutes*, 5th ed (Markham: LexisNexis Canada, 2008) at 168.

[63] The right to examine OSRs has been included in the *Education Act* since at least the 1970s. At that time, the rights and considerations arising from the break-up of the traditional family unit were likely not front of mind for the drafters of the legislation. The appellant has not provided any additional evidence that would lead one to conclude that the Legislature intended section 266(3) to apply to parents who have no contact with their children.

[64] Neither the purposes of the *Education Act* nor the purpose of the OSR, set out above in the discussion of the object of that Act and intention of Parliament, would support a finding that non-access parents should be entitled to examine their child's OSR.

[65] There is a clear intent on the part of both the federal and provincial parliaments that access parents should be given information about the health, education and welfare of their child, through section 16(5) of the *Divorce Act* (in the case of divorce) or 20(5) of the *CLRA* (in the case of a legal separation). This intent is not frustrated by the suggested interpretation of section 266(3).

iii. Suggested interpretation is reasonable and just

[66] The suggested interpretation that *parent* in section 266(3) does not extend to a non-access parent is reasonable and just. There is no reason to permit a parent, who has no role in the life of his/her child, to access that child's private educational affairs.

[67] Previous orders have determined that section 20(5) of the *CLRA* and section 16(5) of the *Divorce Act* expressly authorize the disclosure to access parents of information relating to the health, education and welfare of the child for the purpose of section 14(1)(d) of the *Act*.[28] These orders have also found that these sections do not permit non-access parents to obtain information about the health, welfare or education of their children and a request for a child's information under such circumstances violates the personal privacy of the child and is not authorized by statute.[29]

Conclusion

[68] Based on the discussion above, I find that because the appellant has neither custody of nor access to his child, he is not a "parent" for the purpose of section 266(3) of the *Education Act*. As a result, the exception in section 14(1)(d) does not apply to enable the appellant to access his son's OSR record at issue in this appeal.

[69] Based on the discussion under the "Personal Privacy" heading, above, and because of my finding that section 14(1)(d) does not apply, I find that, for the records that contain the personal information of the appellant, the records qualify for exemption

[28] See M-787 referencing the *Divorce Act*; See P-1246, P-1423, and MO-1480 referencing the *CLRA*.
[29] See P-1189.

under section 38(b) of the *Act*. With respect to the records which do not contain the personal information of the appellant, I find that they qualify for exemption under the mandatory exemption in section 14(1) of the *Act*.

Additional matter

[70] One of the additional issues raised in this appeal is whether the right to examine the record under section 266(3) of the *Education Act* includes the right to obtain a copy of that record. Because of my finding that section 266(3) of the *Education Act* does not apply to the record at issue, it is not necessary for me to review this issue in this appeal.

ORDER:

I uphold the decision of the board and dismiss this appeal.

Original signed by: March 7, 2013
Frank DeVries
Adjudicator