



ONTARIO SPECIAL EDUCATION (ENGLISH) TRIBUNAL File #10

IN THE MATTER OF the *Education Act*, R.S.O. 1980, c. 129;
IN THE MATTER OF Ontario Regulation 554/81, Regulation made under the *Education Act*;
AND IN THE MATTER OF the minor child born in 1978;

BETWEEN

MR. AND MRS. R.

Appellants

- and -

THE BOARD OF EDUCATION FOR THE REGION OF YORK

Respondent

Tribunal Members:

Grant R. MacDonald
Margaret R. Walker
Kenneth J. Weber

Chairman
Member
Member

For the Appellant:

Ms. Marion Lane

For the Respondent:

Ms. Brenda Bowlby

The hearings were held in Toronto on June 9, 10, 16, 17, 20, July 2, August 27, 28 and 29, 1986.

Appellants' Request

The appellants, on behalf of their child, were granted leave to appeal to a Central Region (English) Special Education Tribunal (Tribunal) by the Ontario Special Education (English) Tribunal in its decision of January 24th, 1986 under s.s. 36(1) of the *Education Act*, R.S.O. 1980, c 129 (the Act).

The appellants ask that the Tribunal make an order requiring that:

The child be placed in an age appropriate class at Woodbridge Public School with a Diagnostic And Resource Teacher (D.A.R.T.) assistance in the classroom or resource/withdrawal or a teacher's aide as necessary to meet the child's needs according to a plan as defined in paragraphs 63 and 64 of s.s. 1(1) of the Act.

Respondent's Reply

The respondent requests that the Tribunal dismiss the appeal and affirm the recommendation of the Identification, Placement and Review Committee (I.P.R.C.) of May 30th, 1985 that the child be placed in a primary, self-contained class for slow learners at J. A. Gibson Public School in Maple.

Witnesses

The Tribunal heard twenty-two witnesses during the nine days of hearings; eleven for the appellants and eleven for the respondent.

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Appellants' Presentation

Mr. R.

Mr. R. testifies that the parents were informed shortly after the child's birth that the child is a Down syndrome child and further states that "We saw the child first as a child who has the same needs and feelings ..., and then we saw the handicap and how you modify or adjust your life in order to try to help someone who needs special supports." (I,42)¹. Mr. R. further states that "Since the child was born in 1978, we have taken advantage of every opportunity available to get the child involved in normal activities with normal children." (I,94).

The appellants disagree with the recommendation of each I.P.R.C. since June, 1984 for placement of the child in a self-contained class at J. A. Gibson Public School in Woodbridge.

The appellants contend that the child learns by modelling the behaviour and manners of [the child's] peers and that the child will learn best in a regular classroom. Mr. R. is concerned that in a self-contained class "the child will basically learn to be a slow learner. The child does imitate other children, the child does behave in the context in which the child's in" (I,116).

He believes that in a self-contained class, integration for the child will only be at recess (I,94). In cross-examination, Mr. R. acknowledges that he was advised that the child could be integrated into regular grade one subjects at J. A. Gibson (II,19) . Mr. R. believes that the length of the bus ride to J. A. Gibson School could prove tiring for the child.

¹Reference by volume and page number to transcripts appear in brackets.

[The Tribunal notes that counsel for the appellant indicates a 45 minute bus ride (I,10); Mr. and Mrs. R. in a presentation to the Appeal Board indicate a bus ride of one hour each way (Exhibit 1A-6, p.2); in cross-examination, Mr. R. acknowledges that he was told it was a fifteen to twenty minute bus ride (II,24); Mrs. R. indicates that the car ride was about 20 minutes (III,33).]

Mr. R. expresses some dissatisfaction with Woodbridge P. S. and suggests that communication from the Woodbridge school was sadly lacking. In a letter to the Review Committee of the Board Multi-Year Plan he states, that “the school has agreed to monthly meetings about the child, but we want better and more frequent access to our child’s progress” (Exhibit 8, p.3).

Mr. R.’s testimony outlines the child’s educational experiences and is summarized here.

1978	D.O.B. for the child
Sept./78 - Jan./80	Infant Stimulation Program at Surrey Place
Apr./80 - June/81	Bo Peep Nursery School
July/81 - June/82	Howden Child Development Centre - a.m.
Sept./82 - June/83	Ernest Majury Child Development Centre
June/83	pre-registration I.P.R.C.
Sept./83 - June/84	Kindergarten - Woodbridge P.S., p.m. Country Kiddie College day care, a.m.
June/84	I.P.R.C.
Sept./84 - Dec./84	Kindergarten a.m., 40 min., Primary Learning Disabilities (PLD), Grade 1 p.m.
Dec./84	I.P.R.C.
Jan./85 - June/85	Grade 1 a.m., 40 min. PLD, Kindergarten p.m.
May/85	I.P.R.C.
June/85	I.P.R.C. reconvened
Aug./85	Special Education Appeal Board Hearing
Sept./85	Communication re: Interim Placement
Sept.85 - June/86	Children’s College Private School, Woodbridge
Oct./85	Request for Leave to Appeal

Jan./86

Leave Granted

June/86

Tribunal proceedings

The family received early support through the Infant Stimulation Program at Surrey Place and through the Pilot Parent Group (I,43). The child attended several nursery and day care centres, both integrated and segregated prior to enrolment in kindergarten at the Woodbridge Public School. The child continues to be involved in many community and church activities, including piano lessons and skating (Exhibit 10).

From the report cards in kindergarten and Dr. Moule's assessment, the appellants concluded that the child was doing very well (I,51), had made good gains (I,58) and should be placed in grade one. Mr. R. reports that they were surprised at the recommendation of the May, 1984 I.P.R.C. for placement at J. A. Gibson (I,58). They objected and a compromise of a combined grade one, kindergarten, resource/withdrawal placement at Woodbridge was agreed to for a three month trial period.

Mr. R. says that by the December, 1984 I.P.R.C., the family realized that the placement was not going well, but they wanted the child to stay at Woodbridge rather than change mid-year. The I.P.R.C. agreed.

In the January, 1985 letter to the Review Committee of the Multi-Year Plan, the appellants write that because of the child's progress in a fully integrated setting, they "want the child to continue in a normal setting as long as possible" (I,68 and Exhibit 8).

The parents repeatedly requested an aide in the child's class at Woodbridge P.S. Mr. R. states that "We weren't asking for a personal aide. . . . we did not want the child becoming dependent on an adult in the class" (I,63). At the May, 1984 I.P.R.C., the board told the family that it could not provide an aide to work with the child (I,63). In December, 1984, there was again discussion regarding an aide and the appellants were told that they could find a volunteer aide for the child, but that the school must approve the volunteer.

After the May, 1985 I.P.R.C., there was considerable misunderstanding about the class at J. A. Gibson because the child's report card indicated a multi-handicapped class. Mr. R. states in examination-in-chief that the board explained that it was a class of six slow learners and that two of these slow learners were in wheelchairs (I,81). The appellants attended a reconvened I.P.R.C. in June, 1985 at which the committee upheld the original decision.

Mr. R. states that at the Appeal Board, the parents felt an individualized plan would address the child's academic needs and should include one-to-one teaching of the child. The decision of the Appeal Board disappointed the appellants because they felt it was based on the staffing available and not on the child's needs (I,99). The appellants feel frustrated that the I.P.R.C. and Appeal Board deal with placement and cannot address the development of an Individual Program Plan (I.P.P.).

Mr. R. states that they contacted Jack Taylor at the Ministry of Education, Central Regional Office, in September, 1985, and he arranged a meeting with John Laughlin to discuss an interim placement for the child. The September, 1985 letter from J. Laughlin (Exhibit 1-12) describing an interim placement for the child and suggesting in point 6 that the child would be treated as a non-exceptional child, proved to be a stumbling block. Mr. R. explains that because the letter indicated the school board was planning to treat the child as a non-exceptional pupil, they felt this was not in the child's interest, and took the child to a private school where the child would receive "the support that [the child] needs" (I,106). In response to questioning from Mr. MacDonald, Mr. R. states that he did not know what it meant if the child were treated as non-exceptional (II,47).

The child was enrolled at Country College Private School in Woodbridge for 1985/86. At the beginning of the school year 1985/86, the private school had one class of twelve or thirteen pupils from kindergarten to grade four, although most of the pupils were grade one or kindergarten age (I,106).

Mr. R. wants the child "to be accepted despite [the child's] limits" and "to live a normal, independent, productive life" (Exhibit 8, p.3 and I,73). In order to gain this, he feels the child must attend "the local neighbourhood school, Woodbridge, in an age appropriate class, a regular class placement, possibly with resource/withdrawal or the use of other supports" (I,116).

Dr. Donald Kennedy

Dr. Kennedy testifies that he is a psychologist and that he prepared a report at the request of the appellants to evaluate the child for mainstream programming (Exhibit 9, p.2). He states that his information suggests, that "the child has been fairly well mainstreamed throughout [the child's] school history to date" (II, 56). In order to prepare the report, he observed the child in November and December, 1985, and May, 1986, at Children's College in a setting with 10 to 12 pupils. In his opinion, "the program was not terribly good educationally" (II,61). He observed the child in a group with the teacher and then working with another student or the teacher aide (II,78).

In commenting on the report of Mrs. Halverson (Exhibit 2 A-6) which says that the child "does not naturally learn from observations and imitation",

Dr. Kennedy contends that

"in all my observations with the child, [the child] is a master of observation and imitation. The child learns extremely well, under those circumstances, and I think if it weren't for the modelling of the children in the class, there would be, it just seems to me that the child models those children very well and cooperates with them, and participates in the activities in ways which are appropriate and in my observation of other children and situations where negative modelling is present, I would suspect very strongly that the child would model those negative aspects.

I am hesitating and stumbling because I just can't see how, at all, this child is not the type of child that does not learn from observation and imitation. Modelling is a very large aspect of the child's behaviour" (II,74).

He states that "The child does not test very well" (II,65) and that "standardized tests don't tap the child very well at all in many cases" (II,69). Despite this admission, he made use of the Vineland Adaptive Behaviour Scales (revised) and the McCarthy Scales of Children's Abilities from which results, in cross-examination, he identifies the child as having "mild retardation, we are talking a score of fifty to seventy" (II,131).

Dr. Kennedy acknowledges that he was unaware that the McCarthy Scales of Children's Abilities are not recommended for children with suspected mental handicaps, and also that he does not know whether the revised Vineland has been validated. Dr. Kennedy's evidence is that "the child seems generally to function at about the four to five year old level, with verbal and social skills strong, and basic academic skills weaker" (Exhibit 9, p.16). Dr. Kennedy says that he described the child's mental handicap as "level four" (Exhibit 9) but further acknowledges he was not sure what rating system he was using. In cross-examination, Dr. Kennedy acknowledges that the child is substantially behind the normal expectations for [the child's] chronological age and that the child is experiencing difficulties in a number of areas (II,115).

He states that the child might not function well in a traditional program with the children doing similar activities and expected to do seat work on their own (II, 77). On the other hand in examination-in-chief, Dr. Kennedy suggests that the child would benefit very much by a mainstreamed program at perhaps the grade two level with resource/withdrawal for an hour or an hour and a half per day. He says the program should include a direct reading program and concrete math program (II,89). He also states "the child would respond to fairly short cycles of specifically remedial help" (II,119).

Mrs. Mary Kovacs

Mrs. Kovacs testifies that she is the Senior Partner and Manager of the Program Consulting firm of Mary Kovacs and Associates and is an associate of the National Institute on Mental Retardation (Exhibit 10). She expresses her opinion that interaction between handicapped and non-handicapped people is necessary on a long term and intensive basis to lead to good development, and that changes in behaviour, whether that's social skills or acquiring specific skills, cannot occur if the interaction only happens once in a while with [group activities], or if it only happens at recess time. There must be enough time allotted for handicapped and non-handicapped to become friends (II,162).

In February, 1986, a 24-hour Planning Process, including an Inventory of Activities and Skills (Exhibit 10) for the child was developed by Mr. and Mrs. R. and Mr. Belrose, the child's 1985/86 teacher, with Mrs. Kovacs acting as facilitator.

Mrs. Kovacs observed the child at home and also at school in February and May. Her observations include that on February 25, 1986, the child was in a class of seventeen doing a lot of work with a volunteer (the child's mother) and in the outer circle of the class (II,168). Between February and May, 1986, several ideas developed in the Planning Process were incorporated in the class. In May, 1986, Mrs. Kovacs observed the child was more a part of the group and while the child did some work individually with the teacher, the child could work on [the child's] own for ten or twelve minutes. In addition, Mrs. R. was no longer involved as a volunteer.

The goals developed for the child for the next year were based on the desire for an integrated setting in the local school. Mrs. Kovacs states that the focus of a plan for a child should reflect the needs of others, including family, teachers, other pupils, not just the needs of the child, and also that it is important to look at the whole child in many environments (II,182).

In cross-examination, Mrs. Kovacs says that in a regular class, a special education "child needs a special input. We can't have education by osmosis" (II,196).

In discussing labels, she says that it depends on the purpose of the label and how it is perceived. She says that the educable learner label has had "negative status for the child" (II,199).

Mrs. Kovacs acknowledges that her testimony involves a great deal of generalization about normalization which she defines as a "community presence, community participation, skill building, and status and rights and privileges, and choice making, so the goals are always somehow or other into those categories" (II,211).

Mrs. R.

Mrs. R. testifies that "from the moment that the child was born, I was interested in giving the child as many experiences as I could . . . and I knew that the child was going to be slower developing, so I wanted to make sure that the child especially had all those opportunities" (III,8). She also stresses that the child has been very healthy (III,10) which is reinforced by an excellent attendance record at Woodbridge.

Mrs. R.'s testimony outlines the child's school experiences and Mrs. R.'s involvement with teachers and in the classroom. In the four preschool settings there were very specific school and home programs set up with coordinated goals and programs. These included the teacher visiting the appellants' home on a regular basis, often weekly. The appellants carefully chose Woodbridge and the child was registered at Woodbridge Public School in September, 1983 (III,27). Mrs. R. says that she spoke with Mrs. Tufman when she dropped off or picked up the child from school (III,28) and felt that the child did very well in kindergarten (III,31). When Dr. Moule's report indicated that in three areas which he tested, the child was in the educable retarded range, and in two other areas the child was trainable retarded, Mrs. R. felt that the child had done well (III,32).

At the May, 1984 I.P.R.C., Mrs. R. wanted to see the child in grade one (III,36), but the compromise was kindergarten half day, grade one half day. She adds that “the withdrawal was an extra thing” (III,37).

In discussing 1984/85, Mrs. R. says that the year was a confusing one for the child (111,66) and that she feels there had not been any real cooperation in a plan for the child (111,67). In discussing the various components of the placement, she said that she had not been concerned about kindergarten or the primary learning disability class, but was concerned about the child’s participation and inclusion in the Grade one program (III, 39).

In the appellants’ presentation to the Appeal Board, they state that “as the child’s parents we are prepared to be involved in all aspects of this program and work closely with teachers and school staff” (Exhibit 1A-6). In cross-examination, Mrs. R. says that she wanted to be included in goal planning (III,112) and to have a meeting so that they could all work together (III,109). In cross-examination, Mrs. R. states that she requested no monthly meeting (III,83).

After the December, 1984 I.P.R.C. when the child’s kindergarten and grade one program time were reversed, and an aide had been discussed at the I.P.R.C., the appellants attempted to find a volunteer aide for the child’s grade one class by advertising in the local papers and contacting local associations. This proved to be very difficult and so, from the middle of February until mid-May, Mrs. R. acted as the aide and was in the class for two-hour periods twice a week. She relates that “Mrs. Bradford preferred me to sit beside the child, and then I sort of became the child’s personal aide” (III,54) and worked on specific skills. In mid-May a student from Humber college began as a teacher’s aide for two hours, five days a week (III,60) . At the time of the I.P.R.C. in May, 1985, Mrs. R. says that from the results of Mrs. Halvorsen’s testing “I felt that the child did well. . . . there was some growth over that period of the year, and I felt generally good about it” (III,65). Mrs. R. felt that the child needed one classroom with one teacher and one set of classmates in grade two (III,68).

Mrs. R. describes two visits to J. A. Gibson. In June, 1984, she took the child and felt that the child was very uncomfortable, but entered the room with coaxing (III,33). She observed six or seven children, most of whom were older than the child, working with the teacher who Mrs. R. describes as “very warm and very friendly”. In response to her questions, she reports that there was to be a younger group of children in September 1984 and that integration was determined by the teacher and the principal. The December, 1984 I.P.R.C. meeting was held at J. A. Gibson and at that time she felt the class was isolated from other classes (III,35).

In response to Professor Weber’s questioning about the September, 1985 letter from John Laughlin, Mrs. R. responded that they were concerned about the need to provide a full time aide and also that the child would stay in the grade one class (III,134).

The Appeal Board met in August 1985 and upheld the I.P.R.C. decision and in September, the appellants determined to proceed to request Leave to Appeal. Mrs. R. expresses concern that at the I.P.R.C. and Appeal Board, placement can be discussed, but not programs and services (III,67).

Mrs. R. states that she “found out that the child should have placement in [the child’s] school until all the appeal process was finished” (III,68) and so they attempted to register the child at Woodbridge in September, 1985. When they found that the child had been registered at J. A. Gibson, they placed the child at the Children’s College in Woodbridge, the school component of the child’s day care centre. During 1985/86, Mrs. R. was an aide and worked with the child one hour each day until mid-May (III,70). In the small class at Children’s College, Mrs. R. says that the child has developed in all aspects of [the child’s] life, particularly in personal growth and self-confidence (III,71)

Mrs. R.’s long term goals for the child include the need

“to give the child a variety of experiences in life, . . . to go through elementary, secondary school in regular classes, . . . go into the work force in a job that’s appropriate for the child. The child may even want to take college courses . . . and I also see the child moving into the community and living on [the child’s] own. . . . the child needs to belong and to go through with children who are the same age as the child, and so that the child will develop and grow and know what it is like by modelling them and know what is appropriate”. (III,72).

Mrs. Patricia Tufman

Mrs. Tufman testifies that she was the child’s kindergarten teacher in 1983/84 and 1984/85. She describes the child’s report cards as very positive in nature because she wanted to build self-esteem and to emphasize the child’s strengths, but adds that “if you put them in the context of the overall program, it becomes clear that there are areas where the child is not able to function with respect to the curriculum” (IV,145).

She describes 1983/84 as a good, positive experience all around. Although the child was falling far short of what other children were doing in terms of curriculum, the child was making [the child’s] own progress, and the child’s language developed very well that year, particularly when the child was talking about things that were meaningful for the child. She states that much of the child’s play was parallel play (IV,152). She adds that the child did not have the necessary pre-reading and math skills at the end of 1983/84 for the formal grade one program (IV,179).

In 1984/85, Mrs. Tufman explains that “there was a great deal of informal communication [among the teachers] and I certainly had my own plans in terms of goals for the child within the kindergarten” (IV,162). During the second year she didn’t see the great spurts in language development she had observed in the first year. She says that the child had much more routine and consistency in the child’s first year than in the child’s second year, simply because of a longer day the second year, and a wider range of people, but added that this is expected of children as they grow (IV,166). She says that at the end of the second year the child’s academic ability was “low in reading readiness [and] math readiness. The child could not print [the child’s] name [and] did not know the names of the letters of the alphabet”

(IV,179).

Ms. Barbara McCormack

Ms. McCormack testifies that she provides the day care for children at Country Kiddie College before and after school hours. She describes the child in the day care setting as very co-operative, very good at tidying up, and never loud or rowdy. During the three years that she has known the child she says that “at the beginning I had a hard time to understand the child’s language, but now I think that the child has really matured and I can carry on a conversation” (IV,193).

Mr. Darrell Belrose

Mr. Belrose testifies that he is an elementary teacher at Children’s College Private School in Woodbridge, and taught the child in 1985/86. Belrose and his wife, who is a teacher’s aide, are the staff of Children’s College. In September, 1985, there were twelve children, including a grade four student, the child, three grade one students and seven senior kindergarten children (IV,206). From January to March, six more senior kindergarten children were enrolled.

Belrose testifies that he spoke with the appellants prior to September in preparation for the child’s enrolment. He expressed his anxiety about having a pupil like the child in his class, and the appellants emphasized that he should treat the child like the other children in terms of social skills.

Belrose estimates that he and a “buddy” spent approximately one and one-half hours per day with the child on a one-to-one basis (IV,234). In cross-examination, Mr. Belrose says that he spent seven and one half hours per week with the child (IV,276).

He says that the child is a slow learner and did not progress as rapidly as a regular grade one child. Although the child could stay on target for four or five minutes, he was constantly trying to pull the child back. He testifies that the child needs guidance to complete a task.

In describing the child’s motor ability, he states that in the Canada Fitness Testing the child achieved an award of excellence, compared with other Down syndrome children, in four of the six tests. He testifies that the child strives to model the other children and gets along well with them. He says that he treats the child the same as other children in regard to discipline. Although he noticed perseverative behaviour, he mentions in testimony and to Dr. Kennedy that the behaviour has disappeared.

He considered the child to be in grade one, although in cross-examination, he acknowledges that the child is pre-grade one. He says the child is “verbally orientated” [sic] (IV,225) knows the numbers to thirteen, and has a core of maybe 20 to 30 rote memory words. He states that the child can write {the child’s} name [independently] (IV,213) but also says the child does not have the fine motor skill to make the [initial letter] (IV, 212) . In cross-examination, Mr. Belrose acknowledges that the child cannot write “ the child’s name] without assistance (IV,281). The

Tribunal observed the child in two video-tapes of recent school activities: explaining the child's science fair project in April, 1986, and in the school musical production in June, 1986 (Exhibit 20.1 and 20.2).

Mr. Norman Kunc

Mr. Kunc testifies that he is an author and lecturer, completing his Master's degree in Marital and Family Therapy at the University of Guelph. He describes the benefits of integration for himself and highlights the very positive effects of "modelling" on his behaviour. He states:

"It's largely based on my experience in being both in an integrated setting and in a segregated setting. I've had first hand knowledge of what it feels like to be in both settings. . . ." (V,8).

Mr. Kunc states that in his opinion the benefits of integration are similar for both physically handicapped and mentally retarded students. He acknowledges in cross-examination that his views are not based on documented research and that he is not familiar with York Region Board's policy on education and particularly with its policy on integration of pupils with a physical or mental handicap.

Mr. Philip Difrancesco

Mr. Difrancesco testifies that he is a coordinator of programs in special education with the Hamilton-Wentworth RCSSB and described his board's approach to integration. Exceptional pupils are placed in regular classes, but may be withdrawn for more than 50 percent of the time. Exceptional pupils have a support system, which may include educational assistants, volunteer aides and peer tutors.

Ms. Marilu Miller-Gerrard

Ms. Miller-Gerrard testifies that she is a consultant with York Region RCSSB and describes the board's programs for educable retarded pupils. There are twelve Down syndrome pupils in the board and half of these children are integrated into community schools. An educational support program is provided for educable retarded pupils in their home school and they are withdrawn for up to one-half a day to a resource room for intensive programming with a special education teacher and an aide. There are self-contained classes for other educable retarded pupils in educational support centres or functional life skills programs (V,167).

Ms. Diane Richler

Ms. Richler testifies that she is Director of the G. Allan Roeher Institute (formerly The National Institute on Mental Retardation). The institute supports the premise that the best education a child with a mental handicap can receive is in that child's neighbourhood school in a classroom with his/her age peers (VI,18).

She testifies that there is very poor transference of skills acquired within a segregated [institutional] setting to skills acquired in an integrated setting. She states that very often the handicap that people face is not a direct result of their impairment but is much more a direct result of the environments in which they are placed. The most important thing that could be done to minimize the impact of an impairing condition would be to provide opportunities for that child to learn to be part of the community (VI,26).

She acknowledges she is not an educational expert, and says that it is not enough to simply have a belief that integration will work, but that we need very practical tools in order to help teachers. In response to questions, she says that the institute has received grants in order to hire aides to go into schools in order to support the integration process.

Respondent's Presentation

Mrs. Shelagh Harris

Mrs. Harris testifies that she was principal of Woodbridge Public School from 1981 to June, 1985, and that she attended at the I.P.R.C. meetings regarding the child, in June, 1983, June, 1984, December, 1984 and May, 1985. She further testifies that she was in regular, frequent communication with the appellants, particularly Mrs. R., and that she and they "had communicated well". The appellants were "fairly high-profile", and she "tried to be as open with them as [she] could" and encouraged the child's teachers to be likewise (VI,113).

Mrs. Harris asserts that she and her staff did as much as they could to accommodate the child's special needs within the context of the staffing and programs available at Woodbridge Public School, and further, within the context of the appellants' requests. The child was placed in a kindergarten class for 1983/84 that was "deliberately [a] very small one" (VI,68). When the appellants objected to the recommendation of the I.P.R.C. of June, 1984, Mrs. Harris indicates she arranged a trial placement at Woodbridge Public School with morning kindergarten, afternoon grade one, speech therapy and forty minutes of resource/withdrawal. At the December, 1984, I.P.R.C. which reaffirmed the recommendation of the June, 1984 I.P.R.C., Mrs. Harris testifies she again tried to adjust the child's program to accommodate the child's needs as well as the parents' wishes. However, the aide requested at this point by the appellants was not feasible within the staff complement allowed Woodbridge Public School by the York Region Board. Mrs. Harris says that with misgivings, she did permit the appellants to arrange a volunteer aide. Mrs. Harris further indicates that inasmuch as the child was placed in a regular class at the parents' request, for 1984/85, not all of the requests of Mrs. R. could be filled because all the demands of a regular class placed on a teacher meant that extra tasks would be "putting an unfair load" (VI,98) on them.

Mrs. Harris states in cross-examination that she does not have any special education qualifications, and that she has very little experience of Down syndrome children. She asserts that her technique is to deal with the individual needs of every child to the best of her ability. Mrs. Harris testifies further in cross-examination that there was no written plan or written set of objectives for the child in either the 1983/84 or 1984/85 academic years. She asserts in

examination-in-chief, that the teachers involved with the child did have objectives for the child and met regularly, albeit informally, to discuss the fulfilment of those objectives.

In cross-examination, Mrs. Harris acknowledges that she and Mr. Tufman reported the child as making gains based on where the child started. In testimony during examination-in-chief, Mrs. Harris indicates that during her frequent observations of the child in the kindergarten year (1983/84), she noticed that the child's activity very often did not involve other children. Mrs. Harris also testifies that she was especially concerned about the child's well-being, academic progress, and safety during the 1984/85 year at Woodbridge Public School. She attests to noting the child's confusion during the rotation from kindergarten to resource/withdrawal to grade one, and to noting the child being tired, and on occasion, incontinent. Mrs. Harris asserts that she saw the child "often regress to just scribbling" (VI,83), that the child would wander out after recess and not come in with the other children, and that on one occasion she impeded the child's own blood circulation with elastic bands around the child's wrists, which condition "in a class of twenty-five [can go] unnoticed" (VI,100). Mrs. Harris asserts that during this year, she felt that the child and the child's peers were growing mutually apart, not just academically but socially as well, so that the child was in effect, becoming progressively isolated. Mrs. Harris suggests that, taken together, these issues support her contention that the child would benefit from placement in the special class at J. A. Gibson, where the experience would be in a very small class with extensive resources and supports, along with opportunity for integration.

In cross-examination, Mrs. Harris indicates that it is possible to extend the amount of resource/withdrawal time at Woodbridge Public School beyond forty minutes if the situation warrants, but that programming on an ongoing small-group basis, which in her opinion is what the child needs, could not occur at Woodbridge because of the staffing complement and the overall arrangements established by the Board, for that school. In examination-in-chief she states:

"By May of 1985 . . . I felt we had modified our program as much as we could to try and accommodate the child's needs in . . . Woodbridge Public School, I felt that it was still not meeting the child's needs" (VI,108).

Mrs. Mari Ishoj

Mrs. Ishoj testifies that she is a speech therapist for the York Region Board, and that she did a speech and language assessment of the child in September, 1983, and saw the child approximately once a month for the 1983/84 academic year.

Mrs. Ishoj states that she had concerns about the child's entering a grade one program in September 1984, because the child would find it difficult to comprehend the language of both the teacher and the other students.

Although Mrs. Ishoj acknowledges in cross-examination that she does not have personal knowledge of the proposed class at J. A. Gibson School, she feels the child would benefit

from a smaller class placement with a special program.

Mrs. Rosalyn Mosko

Mrs. Mosko testifies that she is a speech and language pathologist employed by the York Region Board, and that she assessed the child on September 14, 1984. Mrs. Mosko asserts that this assessment was not “fair” because “Mrs. R. was prodding the child on” (VII,41). Hence a second assessment was performed on September 20. Mrs. Mosko states she found the child’s social interaction to be very good, but that the child’s language level was “quite below average” (Ibid.) particularly because of the child’s substitutions, articulation and lack of vocabulary. Mrs. Mosko testifies that she did not have personal interaction with the child after this but consulted weekly with Flo Bolender, the child’s speech teacher in 1984/85.

Mrs. Mosko indicates that to put a child at a functional language level of between age four and five into a grade three class “would be very unfair” (VII,43) because the child would not understand the majority of what the teacher says.

The witness testifies that she attends from time to time at the self-contained class at J. A. Gibson School, and that her office is in this school. She asserts that the class has a language-based program and that language learning goes on all day. She further asserts that an important part of the program for this class is frequent interaction with all other children in the school.

Mrs. Ellen Halvorsen

Mrs. Halvorsen testifies that she is presently retired from the York Region Board but in 1983/84 attended periodically at Woodbridge Public School to do assessments of children and in the 1984/85 year, taught at the school four days a week in the role of a D.A.R.T.

Mrs. Halvorsen states that she completed extensive assessments of the child using standardized, unstandardized, and informal instruments (Exhibit 2A-3 and 6) although she adapted instruments from time to time for the child because “standardized tests, none of them are really for exceptional students” (VII,125). She further states that she held frequent conferences with the child’s teachers, and that in her personal interaction with the child “we really developed sort of a relationship of trust” (VII,88). Mrs. Halvorsen feels that the child’s learning difficulties include: not being able to generalize, not learning naturally from observation and imitation, and not spontaneously transferring from one situation to another without direct teaching. She reports the child as being nervous and anxious during large integrated situations such as school assemblies. It is the opinion of the witness that the child would be overwhelmed in and by a regular grade three classroom situation.

In cross-examination, Mrs. Halvorsen acknowledges that the integrated situations for day care and kindergarten helped the child’s speech and social skills.

On being questioned whether the child benefited from being in the grade one classroom, Mrs.

Halvorsen says "I am sure that the child did benefit. I just know the situation where the child could learn the best" (VII,135). The witness asserts that this would be in a smaller class where there is lots of opportunity for individual attention, and where the child will not become frustrated in the manner Mrs. Halvorsen had observed at Woodbridge Public School.

Dr. Allan Moule

Dr. Moule testifies that he is a registered psychologist, and that he is employed by the York Region Board where his role is primarily to consult with teachers concerning children's problems.

He testifies that he conducted intelligence tests with the child in May, 1984 (Exhibit 2A-2) a reassessment in May, 1985 (Exhibit 2A-7) and that the test results indicated a level of trainable retarded. He further testifies that "other qualities in the child" (VII, 157) led him to suggest to the parents and to the York Region Board that an educable retarded program would be more appropriate for the child. In cross-examination Dr. Moule acknowledges that on certain subtests of some of the intelligence tests administered to the child, she did score in the educable retarded range, but where cognitive skills are measurable, she scored in the trainable range.

The witness further states that tests of the child will have a "certain range of error [but] they are not totally out of line" (VII,199).

Additionally, Dr. Moule testifies that he observed the child in class often. In kindergarten he noted good progress, but in grade one the child's activity had become separate from the other children despite the attempts of the teacher to involve the child. It is the opinion of Dr. Moule that in a regular class, the child will model inappropriate behaviour most, because it stands out. He asserts that to accede to the suggestion that academics be ignored in order to concentrate on the "other things which are really important . . . would be doing the child a very great disservice" (VII,180-181). He suggests that a resource withdrawal situation will not be best for the child in that responsibility for the child may be uncertain. Inasmuch as the child would need the maximum withdrawal, then "why not put the child into an appropriate program in the first place?" (VII, 184).

Dr. Moule repeats in cross-examination that because the child is "at the bottom of the EMR range at best, and at the top of the TMR range at worst" (VII,207) resource/withdrawal is not best for the child since this option is for the less severely handicapped. He reaffirms that in considering all the factors in the self-contained class it is the appropriate option for the child.

Mrs. Charlene Webb

Miss Webb testifies that she is a teacher with the York Region Board, that she holds Special Education Specialist with Teaching the Trainable Retarded qualifications, and that she was the teacher of the primary learning disabilities class at Woodbridge Public School in 1984-85. In this latter capacity she was the child's teacher for the resource/withdrawal component of

the child's program, approximately forty minutes a day. Miss Webb attests that she developed an IPP for the child in which the goals centred on reading readiness skills, self-care, and work habits. She further attests that she had extensive liaison with the child's other teachers regarding the child's work. It is the opinion of the witness that the success of the resource/withdrawal component of the child's program was limited. The child's on-task behaviour was episodic "the child's ability and concentration levels would vary from day to day" (VIII,16), the child's frustration increased, and the child's cooperation decreased concomitantly "sometimes saying no to me quite a bit . . . refusing to come to my class" (VIII,17). Miss Webb attests that the child frequently became very weary, that the child's academic gains were very small, if any, and indicates further in cross-examination that the child was not "gaining anything to feel good about [the child's] self" (VIII,46). Miss Webb also indicates in cross-examination that it was "hard for my kids even for the forty minutes to have the child in there" (VIII,36) and further describes in examination-in-chief that the other students were "distracted a lot because of the child" (VIII,16) and in Tribunal clarification that they were "annoyed at the child having all my attention" (VIII,69). The result, Miss Webb indicates, is that the other students did not become friendly with, or have any association with the child.

Upon examination of Exhibit 19, examples of work submitted by Mr. Belrose as indicative of the child's work at Children's College in 1985-86, Miss Webb indicates that in her opinion, the child has not made very much progress insofar as the child's school-work is concerned.

Miss Webb testifies that the best learning environment for the child would be a small class with a program that includes life skills and self-help skills.

Miss Webb acknowledges in cross-examination that one and one-half or two hours of intensive one-on-one or small group work would have benefited the child depending on the type of work. She further acknowledges that her goals for the child were limited by the structure of time available and by the nature of the child's needs. The witness says she does not recall whether or not she suggested the time for the child's resource/withdrawal be extended, but that in any case it was "not clear for me to suggest that anyway because Mrs. R. wanted kindergarten; Mrs. R. wanted grade one and the only time that was available to me to give resource was at 11:30" (VIII,32). The witness reiterates that extended resource time would be helpful, but expresses reservations. "[the child] would have to stay in class for the whole day and I don't know whether even today the child could handle that totally. There's just a lot of things that affect a child like [this] child" (VIII,52-53).

Miss Florence Bolender

Miss Bolender testifies that she is a teacher in the York Region Board with qualifications in special education and speech, and she has taught for thirty-one years. The witness saw the child for thirty minutes twice a week in 1984/85, for speech and language development.

Miss Bolender states she followed goals with the child as outlined in a written plan by Rosalyn Mosko. The witness reports she worked with the child one-on-one, and found the child

“needed a great deal of individual help for any task” (IX,8). Miss Bolender asserts that the child would encounter difficulty in a regular grade three class because the language level would be above the child’s capacity to understand.

In cross-examination, the witness reiterates that it was difficult to keep the child on task, and as well, that most of the objectives [of the plan] were not met although there was excellent help from Mrs. R. in a home language development program.

Mrs. Margaret Hill

Mrs. Hill testifies that she is a teacher with special education qualifications. She was the supply teacher in grade one at Woodbridge Public School for a consecutive period in March/April, 1985, approximately six weeks.

Mrs. Hill says she keeps a daybook on all students she teaches and was advised to keep an extra notebook recording the child’s progress (Exhibit 34). The witness says, as is noted in Exhibit 34, that during work periods it was “. . . characteristic of the child” (IX,30) to put [the child’s] work away as soon as the child was left alone. She also asserts that “the child would never clean up” (IX,31) even though all the other children did so. Mrs. Hill asserts that while the other children were working, the child, if left unattended, would scribble over the child’s work quite regularly, and on occasion, colour [the child’s] face randomly with the child’s marker. The witness attests that the child was not a behaviour problem unless the child was adamantly opposed to a task.

Mrs. Hill further states that it was the child’s habit to decline to join reading groups although the child was regularly invited especially because Mrs. R. had requested this. The witness also says that the other children “paid little attention to the child” [and that] “Mostly they avoided the child” (IX,45).

In both examination-in-chief and in cross-examination the witness indicates that the child responded better, if not consistently, to a reinforcement technique [a duck stamp] and further, that the child “generally completed the child’s tasks” (IX,58) when Mrs. R. was present.

Mrs. Margaret Bradford

Mrs. Bradford testifies that she was the child’s grade one teacher in 1984/85, and that she has been a teacher for twenty-six years, mostly of grades one and two. She does not have special education qualifications.

The witness states she did not “feel very good” (IX,69) about the child’s progress after the first semester. She could not get the child to clean up, and she felt frustrated by the attention that the child needed in relation to the other children. “I couldn’t spread myself that thin to the child . . . and also to move around with the other children in all fairness to their needs” (IX,69). The child was included in reading groups at the child’s mother’s request even though the work was “way over the child’s head” (IX,71) so that “the child was bored and refused to come

when invited the next time” (IX,71).

Mrs. Bradford indicates there was a progressive decline in involvement between the child and the rest of the class. The child would be reluctant to enter the classroom, and often indulged in socially inappropriate eating habits and playground behaviour. At an assembly, the child refused to come to the stage to receive an award. The child’s mother then carried the child up (IX,83). The witness also states that it was difficult to keep the child on task, and that unless immediately supervised would put the work away or scribble on it. It is the witness’s opinion that this type of academic environment is “overwhelmingly beyond” (IX,87) the child and that despite trying everything Mrs. R. suggested, there was not much result. The child “rarely smiled” (IX,88) she says.

In cross-examination, the witness acknowledges that she felt gradually overwhelmed by the demands of the child’s class into which not just the child, but two behavioural students and an English as a second language student had been integrated. Although she had a written pupil plan for the child, she did not exchange it specifically with other colleagues. The witness further acknowledges that she did not intervene in what she determined to be the child’s manipulation of the aide supplied in May/June, 1985 by the appellants. However she says that at this point, the child “was not inclined to do anything. The child was very stubborn and very unhappy” (IX,122).

Mr. Kirby Brock

Mr. Brock testifies that he is the principal of Sharon Public School, a teacher for nine years, holds special education qualifications, and that he acted as chairman of the I.P.R.C.s that dealt with the child in June, 1984, December, 1984, and May, 1985. The witness testifies that on each occasion the committee identified the child as a slow learner and recommended placement in a self-contained class at J. A. Gibson School, on the premise that this would be the most effective placement. He further testifies that each time the parents wished the child to remain in Woodbridge Public School in a regular class.

Mr. Brock asserts that the recommendations of the committees were based on advice and observation from the child’s teachers, from Board personnel involved in assessing the child, and from his own observation of the child in a classroom setting prior to the May 1985 I.P.R.C. During his visit, he observed the child withdrawing from the child’s classmates and the lesson “The child was sitting in the middle of the group, sitting sideways, not facing the experience chart paper” (IX,138) and engaging in other activities such as putting X’s on all the child’s answers, hiding under a table and then leaving the room, followed by the child’s aide.

Mr. Brock states in cross-examination that the mandate of an I.P.R.C. does not include assigning aides. He further states that the committee felt the child’s needs were “beyond resource/withdrawal based on the evidence that we had” (IX,148), and reiterates that the committee felt that of the options for the child’s placement: regular class, self-contained class for slow learners and trainable retarded placement, the self-contained class is the best for the child.

Mr. John Laughlin

Mr. Laughlin testifies that he is the Superintendent of Special Education for the York Region Board since 1983. He states that the Board's 1985 Special Education Plan (Exhibit 4) and proposed amendments for 1986/87 (Exhibit 36) have been approved by the Ministry of Education and unanimously endorsed by the Special Education Advisory Committee (SEAC) of the York Region.

Mr. Laughlin states that the York Region Board "embodies the philosophy of integration" (X,12) and believes "every pupil should be educated in the most enabling environment" (X,12); and that the "type and amount of integration is determined by the positive benefits for all" (X,13). The Board's two most common accommodations for educable and trainable retarded pupils are the self-contained class and the resource/withdrawal system. The latter is for pupils with mild or moderate disabilities who are given help by special teachers for fifty percent--usually less--of the day in their neighbourhood school. Self-contained classes, where for the most part, educable retarded pupils are placed, are established in a centrally located school, and pupils are transported to it. The Board does not assign personal aides to individual pupils, but rather to classes as a whole.

It is Mr. Laughlin's contention that the child would not profit from instruction in a regular class, and that the child's placement there would be mutually disadvantageous for the child and the child's peers. She would not have an IPP but rather a modified curriculum. The language and function of the class would be above the child, and, the teacher would not be able to devote adequate time to the child. A personal aide, which would be contraindicated by the Board's approved plan, would not solve the problem and Mr. Laughlin contends, would be doing the child a disservice.

The witness states that the child would benefit most from a self-contained class environment, managed by a specially trained teacher with an aide, and where the program emphasizes speech and language development, functional life skills, and where integration is encouraged.

" . . . where youngsters are encouraged to get out of the self-contained class, preferably in the afternoon with traditionally the non-direct teaching activities like music, physical education, art. I see no reason why the child cannot take that with chronologically aged appropriate peers" (X,24).

Mr. Laughlin testifies that according to the plan "the type and amount of integration is a decision of the principal in consultation with staff and parents" (X,29). He states that the child should be placed with one teacher who can manage the child's program carefully, where there are high expectations for "discipline, socialization, and for academics" (X,25). He says "We can teach the child to learn in this environment" (X,25). Mr. Laughlin asserts that there is such an environment at J. A. Gibson Public School and feels it would be ideal for the child.

Post-hearing Legal Submission

In the course of considering its decision the Tribunal received a request from Ms. Marion Lane, the counsel for the appellants, asking that the hearings be reopened in order to permit her to submit points of law with respect to the case which, she indicated, she overlooked during the summation.

Following consultation with its counsel, the Tribunal met with counsel for the appellant and the respondent on Thursday, September 4th. After hearing Ms. Lane's request and the opinion of Ms. Bowlby, the Tribunal decided that while there were not sufficient legal grounds in Ms. Lane's arguments to reopen the hearings, in the interest of ensuring that every fairness be granted to the appellant, the Tribunal agreed to receive from the counsel for the appellants in writing, her points in law, giving the counsel for the respondent the right to reply. The submission, response and reply statement were filed with the secretary for the Tribunal on Thursday, September 11th.

The submission addresses two major issues:

Placement, and the impact of the Charter of Rights on the case. Counsel for the appellants contends that the Tribunal has "unlimited discretion to 'make such order as it considers necessary with respect to the placement of the pupil'". This contention is countered by the argument that, "The authority of the Special Education Tribunal is to direct a placement within the plan as approved by the Minister."

Citing J. Eberle in D. v Muskoka Board of Education in the Ontario Divisional Court, to support her contention that consideration of program and services is required to identify an appropriate placement suitable to the needs of the pupil, counsel for the appellants claims that the Tribunal has jurisdiction to state the exact nature of the placement for the child and to set the conditions in that placement. The Tribunal notes that this quote is not given in full context and is taken from the Obiter Dictum of the decision, which significantly minimizes its legal authority.

The Tribunal notes the remarks of the Central Region Tribunal in B. v The North York Board of Education. Distinguishing the Ontario Special Education (English) Tribunal D. v Muskoka Board of Education decision, in respect of matters related to placement, the B. Tribunal stated that program of studies and philosophy of education are two matters to be considered in determining placement. These matters, as part of the evidence given in hearings before a Tribunal, are most important and helpful in assisting a Tribunal to decide the placement, which is in the best interests of the exceptional pupil.

This Tribunal then concludes that, given adequate evidence on various placements open to parents under the Board's Special Education Plan, it is in the position, and has the authority to order, what it considers the most effective placement for the pupil in question. To order a placement, which it considers is not in the best interests of the child, regardless of who wants that placement, is contrary to good judgement and responsible decision making.

The counsel for the appellants argues that this Tribunal is a court of competent jurisdiction to consider violations of s.s. 15(1) of the Canadian Charter of Rights and Freedoms. We are not satisfied that we are a court of “competent jurisdiction” as defined by s. 24 of the Charter, and even on the assumption that we would be, we do not see this case as discriminating against the child according to s.s. 15(1) of the Charter.

The Tribunal has heard eleven witnesses each for the appellant and the respondent; it has carefully examined 37 exhibits; it has studied the points of law brought forward; it has reviewed in detail the oral testimony and believes that it has considered all aspects in its decision.

Basis for Decision

The Tribunal, having heard the testimony and having reviewed the evidence, duly evaluating it as applicable, recognizes and endorses the right of the child to attend a public school in a school section, with the child’s peers.

In developing the basis for decision, we have kept in mind the need for a balance in the child’s life, of academic skills, life skills, and socialization. At the same time, we have been sensitive to the child’s development in a total context of home, school, church, and community. And we have tried to be conscious of the child’s future as an adult person. It is the firm conviction of this Tribunal, that our decision is rendered in the child’s best interests.

Parents’ Short And Long Term Goals For The Child

The parents’ long term goals for the child are to see the child complete elementary and secondary school, and perhaps take some college courses, to live independently if possible, and to carry out a job in accordance with the child’s abilities and skills. In the short term, the appellants are anxious for the child to relate to normal children as much as possible, to live in the child’s community, to develop a sense of belonging, to have a variety of experiences, and to be “one of the kids”. They would also like to see the child attend the neighbourhood school with the child’s brother, and be in an age-appropriate, regular class (grade three in 1986/87).

The appellants have high expectations for their own involvement in the child’s education. They would like to be involved in all aspects of the program, working closely with the teachers and the school staff.

The Tribunal believes the appellants’ approach of having high expectations for their child is a correct one. We concur that the child needs the opportunity for the child’s talents and abilities to be continually challenged. We concur with the parents’ desire to have the child accepted, despite the child’s apparent differences, and to live a normal, independent, and productive life insofar as it is possible. We laud the parents for attempting to give the child as many developmental experiences as possible since birth.

In the light of the parents' wishes and desires for the child, the Tribunal has had to weigh carefully, the evidence of the child's present, daily functional level. To a significant extent, the practical and professional observations of the child's teachers, and of others involved with the child, seem to be somewhat at odds with what the parents anticipate, at least at present. The appellant's witnesses, Kovacs and Kennedy, and the child's teachers, Tufman, Bradford, Webb, and Belrose, all indicated that the child has special needs in the area of instruction. They each confirmed the potential benefit in the child having a properly trained special education teacher, skilled in the most effective methods to enable the child to learn. The standardized tests, despite their limitations in substance and their application to the child's case, consistently reaffirmed the existence of a major gap between the child's academic and intellectual achievement and the age-appropriate level. We heard extensive testimony of the need for adult prompting to encourage interrelationship between the child and the child's peers.

The Tribunal believes that taken together, the observations, findings, and opinions of the teachers and other professionals, necessarily have a major effect on how the appellants' goals for the child can best be realized.

Modelling

We did not find in the evidence any reasonable validation of the assumption prevalent throughout the appellants' testimony: that appropriate modelling will occur when the child is placed in an integrated setting and that inappropriate modelling will occur in a segregated setting. In fact, evidence suggests that the integrated setting, both at Woodbridge Public School and at Children's College, did not have much impact on the child's behaviour.

The Tribunal is aware that children develop at different rates with spurts and plateaus of intellectual, social and physical growth. Evidence indicates that in respect to language and other academic abilities, the gap between the child and the child's peers is accelerating. Logic and common sense dictate that modelling therefore will not take place if there is limited comprehension.

The teachers testified that the child does not imitate or transfer spontaneously. This is consistent with the evidence in much of the literature on Down syndrome children. Also, the testimony of several witnesses is that the child did not participate until the child received the kind of individual attention the child requires, indicating that for the child, learning and socialization were not taking place in the child's class, in any significant way.

The Tribunal believes that the child very much needs direct teaching and directed involvement such as would be available at J. A. Gibson School in a small pupil/adult ratio.

Effectiveness of Instruction

All teachers who worked with the child indicate that the child needs a great deal of attention - the kind of attention that the child's parents have provided for the child throughout the child's

early childhood years.

Miss Webb testified that the child would be happier in a setting where life and readiness skills, self-care and “fun” things more relevant to the child’s needs would take place.

Mr. Belrose suggests, that “the child needs the constant attention of someone there beside [the child]” and that he had to continually pull the child back into the environment of learning in a class of twelve to nineteen students.

All of this points to the need for a teacher skilled in the instruction of exceptional children and an environment designed to overcome unproductive and episodic behaviour.

Program Responsibility

From the evidence it is clear to the Tribunal that no one professional was specifically appointed to oversee and coordinate the child’s program at Woodbridge Public School in 1984/85. This was reflected in communication problems, redundant testing (The same test was administered by two different professionals within two days.) and inadequate planning for the use of the child’s time.

We believe very strongly in the need for someone to manage the child’s case, someone who will coordinate testing and assessment (and control it where necessary), someone who will ensure that the best possible program is being given to the child, and who will oversee the program modifications necessary to meet the child’s needs.

Above all, it is crucial that this person be responsible for direct communication with the parents. It is apparent to the Tribunal that at least part of the difficulties in the child’s educational experience over the past two years (1984/85) has been owing to a series of misunderstandings, mutual failures in communication, and a developing rigidity in the respective stances of both parties.

Academics, Life Skills and Socialization

The Tribunal is looking for a balanced and effective program for the child. A balanced view of integration for the child requires an appreciation of the contribution of home, church, school and after-hours experiences. These are not separate entities but integral parts of the whole. Socialization occurs in the class, at recess, on the playground, after school, at Brownies, at the breakfast table.

The child also needs the feelings of self-worth that come from success and achievement. In our opinion, the self-contained class seems to be the most logical setting for meeting those needs. We believe very strongly that the child will gain feelings of self-worth from being able to help and not always being the helped. Evidence from Belrose, Bradford, Webb and Tufman, among others, suggests to us that the child has been adrift in the regular classroom with resource/withdrawal. Further, in our view, there is no firm evidence presented to

convince us that for the child a teacher's aide is anything but a makeshift solution.

We agree with Mrs. Kovacs that there cannot be "education by osmosis". The child needs to learn and needs to learn how to learn, in order to integrate with normal children. In a self-contained class the child will receive instruction suited to the child's needs, with attention to those strategies, which will enhance the transferring of classroom learning skills to life in the community.

Further, in the self-contained class at J. A. Gibson School, as it was described in the testimony of Mr. Laughlin, the child would be involved regularly, with the child's age appropriate peers from other classes, particularly in the non-direct teaching activities like music, physical education and art.

Neighbourhood School

Attendance at the neighbourhood school is, in the parents' mind, very much an issue. The parents testify that they moved to the Woodbridge area, near Woodbridge Public School in order that the child could attend a local school. While the Tribunal acknowledges the desirability and respects the parents' wishes, it has the responsibility to examine those salient factors that impinge upon such a demand.

The Act does not establish that a person has a right to attend the neighbourhood school [see subsection 31(1)]. The right that is established is the right for a person to attend a school in a school section. We adopt the words of Stewart, J., in Crawford et al. v. Ottawa Board of Education, [1971] I.O.R. 267 at p.272, 15 D.L.R. (3d) 141 at p.146:

"It is further said that unless a specific power is given to alter a school or, for that matter, to eliminate it, there is no power to do so.

It is suggested that the pupils have vested rights in relation to Champlain School. With this I cannot agree. There is only one school division for Ottawa and its environs, and the Board of Education must supply some school to which students may go within this area. This is the only vested interest that they have. No pupil has any vested interest in any single school."

Every day, throughout this province, a significant percentage of the school population is bussed to and from school. Bussing is an accepted and reasonable part of fulfilling a person's right to an education. Pupils, especially those in rural and suburban areas, are bussed out of their neighbourhood daily for various reasons.

It is simply not realistic for parents to demand that a Board accommodate all special situations in the neighbourhood school. A Board has the responsibility to examine and assess the needs of the total student population. It will then establish classes and programs in the areas where, in accommodating the needs of pupils, they will serve the greatest number most effectively. The Board's delivery of this service in special education is reflected in the Special Education

Plan. The plan is annually reviewed by the Minister who has the power to require a board to make changes in the plan — and does. It is not a denial of a child's rights under the Act, nor an unreasonable requirement, that a child be requested to take a bus ride to a class designed for the child's needs. Reality has to have a bearing on a Board's decision.

Segregation vs Integration, and the child's Best Interests

The Tribunal believes this to be the issue of most heat and least light in the entire case. To begin with, it is difficult, if not impossible to draw any firm conclusions from the literature on the subject. Research methodology is frequently poor and experimental numbers invariably small; the research conclusions are at best equivocal, and at worst polemical, and extrapolations from one area of integration research (e.g., physically handicapped) are regularly misapplied to others (e.g., the mentally retarded).

This confusion is aggravated by the appellant's presentation. Their counsel advised that this "is not an issue to do with integration versus segregation" (I,9) while in the appellants' presentation to the Appeal Board (Exhibit 1A-1, p.2) we read that "The very core of the issue is integration versus segregation". Moreover, whereas examination of several witnesses (e.g. Richler, Miller, Difrancesco, Webb, Bradford) establishes that the child's academic needs might have been better met through extended resource/withdrawal with a specialist teacher, the appellants indicate they "did not want the child becoming dependent on an adult in the class" (I,63).

There is also the problem that arises from the application of integration as a universal concept, to the particulars of an individual case: the issue of whether the child should be integrated into a regular class, simply because this degree of integration is, in and of itself, more desirable.

It is the firm opinion of this Tribunal that the wholesale integration of exceptional pupils into regular classes, solely on the basis of philosophical principle, untempered by due and informed consideration of each individual situation, is directly counter to the best interests of all pupils. Further, it is the conviction of the Tribunal that the assumption of rigid, doctrinaire positions on the issue, not only threatens the very future of integration as a desirable practice, but specifically, in cases such as the child's, serves only to erode the good will and reason that must obtain if all parties are to act in the child's best interests.

The Tribunal therefore holds that both its mandate and its moral obligation is to recommend an educational placement that will most effectively fulfill the child's educational and developmental needs, irrespective of ideology or sentiment.

Of the two placements considered: regular class with an aide, plus resource/withdrawal, or self-contained class with maximum integration, the Tribunal holds the latter to have significantly greater benefit and positive effect for the child. Here the child will have the advantage of a program oriented specifically to the child's needs, administered by a teacher who is professionally and occupationally committed to the purpose, as opposed to the former

where the thrust of instruction must clearly be directed to abilities that are widely divergent from the child's. In the self-contained class, the child's situation will be central; in the other, it will, of necessity, be adjunctive.

In addition, the opportunity is greater in a self-contained class for rapid adjustment and accommodation to the child's development, for continuity of program, and for specialized support where necessary. Furthermore this type of class will permit a simpler direct management of the child's situation as well as uncomplicated channels for communication between teacher and parents. There will be significantly less waste of the child's time, and simultaneously more opportunity for the child to feel success and accomplishment both relatively and absolutely. In short, reason dictates that the self-contained class such as described at J. A. Gibson School, is by far the most effective placement for the child.

There remains however, the parents' contention that the child should be placed in a regular class in order to emulate models that are exemplary, and that if the child is placed in a self-contained class, the child will only learn to be a slow learner. Although this is not supported by the evidence, the Tribunal has considered the appellants' position at length.

We conclude that the argument lacks strength for two reasons. First, our thorough examination of typical Grade 3 curricula, and of the pedagogical models typical for the grade, in juxtaposition to the child's capabilities as revealed in evidence, indicates that the amount of resource/withdrawal the child would require, would in effect isolate the child from the regular class for well over fifty percent of the day. The use of a personal aide would generate similar, or even more intensified isolation. On a practical basis then, the opportunity for modelling that the parents seek, is more likely to be denied than promoted by regular class placement.

The second point is the matter of the child's rate of development vis-a-vis that of the child's peers. Responsible integration does not just mean arbitrarily placing an individual in a situation. There must be acceptance, interaction, and spontaneous mutual involvement. Yet a careful review of the evidence presented throughout this case by both appellant and respondent, forces the conclusion that during the regular class placements of the past few years, this simply has not been happening, and that indeed there is a widening gap between the child and the child's peers. While explanation may be found for this gap, in the work of Piaget for example, or Epstein, or Toepfer and others, it is clear, empirically and logically, that the accelerating intellectual distance between the child and the child's peers, combined with the unsophisticated social behaviour of the age group, makes natural and spontaneous integration exceedingly difficult in a school situation.

It is therefore the Tribunal's opinion that the integration the parents seek will not occur naturally, at this time, in a regular class placement, and that in fact it is more likely to occur in the situation described at J. A. Gibson School where the child and all the child's peers can approach one another from a basis of mutual emotional comfort and academic success.

Critical Elements Not Established

The Tribunal notes that certain critical elements were not established during the hearings.

In our opinion, the appellants fail to establish that Woodbridge Public School would be the most effective place of education for the child. Indeed evidence suggests that the grade three environment of Woodbridge Public School in the fall of 1986 could be detrimental to the child's progress.

The appellants also fail to establish that the self-contained class at Joseph A. Gibson School would be an inappropriate placement for the child.

Further the appellants do not show that the child's development thus far is a result of integration with the child's peers. On the contrary, evidence suggests that it has been a product mainly of direct teaching and the intervention of the child's parents.

Tribunal Decision

It is the unanimous decision of this Tribunal that under the authority of s.s. 36(6) of the Act, that the appeal be dismissed, and that the child be placed in the primary self-contained class at J. A. Gibson Public School, with the fullest possible integration within the context of both the school and the program.

OBITER DICTUM

I Testing

The Tribunal is alarmed at the number and nature of the tests carried out on the child by private agencies and the Board. In the opinion of the Tribunal, far too many tests were administered. For example, the Board held twenty-three test sittings in a period of only nineteen months. Tests were carried out despite the availability of data -- fresh data -- which simply needed to be dug out: demonstrating the fact again that no one was taking ultimate responsibility for the child, a reality which disturbs the Tribunal. The repetition apparently occurred because of lack of communication among Board personnel as to who-was-doing-what, with and to the child.

The Tribunal strongly suggests that the Board review its policies with respect to testing of children with a view to preventing a similar situation in the future. Such confusion simply should not happen.

Most significant for the Tribunal was the use of tests by Dr. Kennedy and Board personnel with little apparent investigation or knowledge of their suitability or to their validity in the child's situation. Dr. Kennedy used the McCarthy Scales, which he evidently didn't know are not suggested for retarded children. The York Region Board used Boehm and TACL both of which are criticized for their lack of validity.

The Tribunal was struck by the repeated testimony of witnesses involved in testing, indicating a discrepancy between results and what they “felt” the child should produce on the tests. This discrepancy, we contend, should have been understood by people qualified in administering tests as indicating the widely accepted principle that academic or ability testing with retarded children does not always yield accurate results. Considerable misunderstanding on the part of the parents might have been avoided had more discretion been exercised by the personnel involved.

II Documentation

The Tribunal is concerned by the amount of time wasted during proceedings due to deficiencies in documentation. Two areas in particular are noted by the Tribunal: the provision of a written curriculum vitae (CV), and support materials appropriate to the testimony presented.

The Tribunal believes that it is common courtesy and efficient methodology for counsel to instruct a witness to provide the Tribunal with a complete and accurate CV so that qualifications and expertise can be established reasonably quickly. The chairman of the Tribunal noted this in particular with Dr. Kennedy and requested that if he should appear before any future Tribunals, he should be so prepared.

A number of witnesses failed to bring with them support documents which would have enhanced the credibility of their evidence, not to mention the reliability of their memories. We believe that counsel has a responsibility to ensure that a witness places before a Tribunal relevant and accurate material, which will assist it in understanding the witness’s testimony.

We suggest, in the future, counsel for both parties should be notified by the secretary for the Tribunal that printed CVs should be provided, and witnesses should be prepared to provide relevant support material to their reports and tests.

III Program Coordinator

As the Tribunal noted in its Basis for Decision, no one professional was clearly responsible to oversee and coordinate the child’s program while the child was attending Woodbridge Public School in 1984-85. We heard the child’s grade one teacher, Mrs. Bradford, in testimony, accept responsibility for the child’s program. However, the testing conflicts, communication problems and lack of a coordinated program plan for the child point to the fact that a single identified professional within the school should have been coordinating the child’s program, and communicating with the parents.

We recommend that the York Region Board of Education review its policies and procedures with respect to the coordination of the special education programs for identified exceptional pupils. Under the circumstances, the coordinator should ensure that the best possible program is developed, implemented to the benefit of the pupil and shared with all relevant

parties.

IV Integration Policy of York Region Board (YRB)

The Tribunal notes and is concerned that while an I.P.R.C. may make recommendation respecting the placement of exceptional pupils and that integration is a factor to be considered in determining such placement, the YRB Multi-Year Plan states that

“The type and amount of integration for an exceptional pupil is determined by the positive benefits for all pupils involved. This decision is made by the principal in consultation with staff and parents.” (Exhibit 4, p.4)

The Tribunal additionally notes that in the description of the Special Education Organization in Chart 6 (Exhibit 4, p.73), there is no mention of the IPRC and its role. This suggests that the principal has the authority to preempt the role of the IPRC to make placement decisions affecting exceptional pupils.

It seems appropriate that the Ministry review the YRB Multi-Year Plan with respect to this omission.

Grant R. MacDonald, Chairman

Margaret R. Walker, Member

Kenneth J. Weber, Member