



ONTARIO SPECIAL EDUCATION (ENGLISH) TRIBUNAL File #24

IN THE MATTER OF the *Education Act*, R.S.O. 1990, C.E. 2:
IN THE MATTER OF Ontario Regulation 305, Regulation made under the *Education Act* as amended, AND IN THE MATTER OF the minor child born 1979.

BETWEEN

C E and T E

Appellants

-and-

The Dryden Board Of Education

Respondent

Tribunal Members:

Wayne Tompkins
James Lunney
Donald Reilly

Chair
Member
Member

For the Appellants:

C E

For the Respondent:

Donald Shanks, Counsel

The hearing was held at the Riverview Lodge, 148 Earl Ave., in Dryden, Ontario on January 8 and 9, 1998.

The hearing was not completed and was recessed to January 15, 1998 for a teleconference to complete the hearing. The participants for the teleconference were in Toronto (D. Reilly, W. Tompkins and W. Wyman) and in Dryden (C. E, R. Victor, D. Shanks, H. Wilson-Boast and M. Barboni Court Report).

Chairman's Note

On the first morning of the hearing, the Tribunal learned that Mr. J. Lunney would be unable to attend due to the severe ice storm in Ottawa. Both the appellant and respondent agreed, on the record, that the hearing should proceed and be completed, and that the decision be rendered by the Chairman and the Member present.

Introduction

At the opening of the hearing the chair stated that this Tribunal would be guided by the *Education Act* R.S.O. 1990, C.E. 2 and the Regulations made there under. Section 37(6) of the *Education Act* provides as follows:

The Tribunal hearing the appeal may (a) dismiss the appeal; or (b) grant the appeal and make such order as it considers necessary with respect to the identification or placement of the pupil. The chair also reminded the appellant and the respondent that the Tribunal would be guided by the Statutory Powers and Procedures Act. Both parties agreed that the hearing should be open.

The Appellant's Request

The appellant requested a Tribunal hearing of the case pertaining to her child because she believed her child's rights as an identified "Exceptional Student" have been violated by the Dryden Board of Education. The appellant wished to appeal the decision of the Appeal Board (June 2, 1997) which upheld the placement recommended by the I.P.R.C. of March 3, 1997 of the child in a home instruction program for 7 hours per week.

The Respondent's Reply

Mr. Shanks then made the following submissions on behalf of the Dryden Board of Education (DBE.) "The child is an eighteen and a half year old student who has been identified as an autistic student. The identification "exceptional communications/autism" is agreed to and is not in question. The most recent I.P.R.C. is March 3, 1997.

Student needs identified on March 3, 1997 were:

- opportunity for increased communication
- continue to develop academic skills

- continue to develop life skills component
- opportunity for physical activities

“The issue to be addressed in the appeal is what placement is best for the child which will also consider the safety needs of staff and other students. Socialization and academic program must proceed after control is achieved.”

Witnesses

For the Appellant

Mrs. C E
Dr. Garry Fisher
Mrs. Joan Schneider

For the Respondent

Mrs. Heather Wilson-Boast
Richard Victor

Summaries of Testimony

For the Appellant

The appellant

The appellants are CE and T E of Eagle River, Ontario on behalf of their child. The mother appeared as principal for the appellants but T E, the child’s father, acted in support and assisted at various times.

The child was born 1979 and was diagnosed several years ago with Early Infantile Autism. The child has received a special education placement in the Dryden Board of Education jurisdiction since the child began to attend school. Several questions have persisted surrounding the extent of the child’s capability to learn academic content. It was noted from various reports entered into evidence that the child, in spite of [the child’s] autistic characteristics, is a moderate to high functioning young child. With support the child is capable of carrying out several household chores very well; the child has a paper route, and generally follows directions in school. However, like many people with autism, the child is very structured and “single-minded” in [the child’s] way of performing most tasks. In other words, once started in a particular direction, it is very difficult to affect any change and if it is attempted, the child reacts negatively and physical aggression may result. The child has been given medication at one time or another but with varying degrees of compatibility and success. The child is a large person weighing 330+ lbs. The child is capable of limited expressive language but receptive understanding appears to be quite good. The child’s lack of expressive language appears to cause frustration, which can result in inappropriate behavior.

The appellant questioned the tardiness of the Dryden Board (the Board) in responding with necessary forms, letters and reports. Mr. Shanks apologized on behalf of the Board.

The appellant began her opening statement by reporting that after an incident on February 21, 1997, the child had received a six day suspension. It was later decided by the principal, that the child would not return to Dryden High School until after an Identification, Placement and Review Committee (IPRC) was convened on March 3, 1997 (6 school days later). The appellant referred to her evidence and distributed a bound copy of a report and letters from Dr. Garry Fisher. Mr. Shanks objected indicating that he needed to confirm that Dr. Garry Fisher from Winnipeg is indeed an expert on autism. Dr. Fisher was unable to attend but his written report was admitted as evidence. Arrangements were made to hold a teleconference with Dr. Fisher from his Winnipeg office on Thursday. The members of the Tribunal, the Board and the appellants interviewed Dr. Fisher by telephone and asked for clarification of his letter. He also explained that the Board did not contest the child's identification but did agree that placement in Dryden High School was not likely the most appropriate. The Board wanted to offer a placement recommended by the Appeal Board in a report dated June 2, 1997 and subsequently a letter from the Board dated June 26, 1997.

The appellant made it clear that her appeal was against the Identification, Placement and Review Committee decision of March 3, 1997.

Mr. Shanks indicated that the child must have a placement that was in the child's best interest but that the safety of others must be assured. The child had been at Dryden High School for the past five years and a variety of interventions had been employed to control the child's behavior. When the Dryden Board has asked for a complete assessment the appellants would agree only to a speech and language assessment. Residential placement had been discussed but no direct action had resulted.

The appellant proceeded with her opening statement and indicated that following the March 3, 1997 I.P.R.C., no consent forms (SP302, SP303) were offered for signature but the identification of the child remained constant and the child's placement was to be 7 hours per week of home instruction. This placement is consistent with the Dryden Board's Comprehensive Special Education Plan, which was approved by the Board and the Ministry in the spring of 1997. The Identification, Placement and Review Committee also directed Heather Wilson-Boast, Richard Victor and Jack Grant, employees of the Board, to research the Dryden area with other service providers to see if an alternative placement could be found. The placement remained "home instruction" to take place at the appellant's residence 7 hours per week. A teacher was to be hired by the Board to carry out this duty.

In questioning the appellant, Mr. Shanks again expressed concern for the safety of the staff and went on to say that in his opinion, the Dryden Board had made every effort as a result of the June 1996 and March 1997 Identification, Placement and Review Committee meetings to satisfy the child's special needs and at the same time, address the safety concerns of the staff.

In light of this, Mr. Shanks requested that the Tribunal dismiss the Appeal and confirm the placement offered by the Board.

The appellant stated that several professionals have been consulted in Manitoba and in Ontario, and she contended that the Board had failed to carry out either the decision of the March 3 Identification, Placement and Review Committee or any other recommended placement. She referred specifically to the Board's letter of June 26, 1997, which described a placement consistent with the non-binding recommendations contained in the Appeal Board Report.

Since the board had taken no observable action to hire a home instruction teacher or a teacher assistant, the appellant phoned the Ministry of Education on March 27, 1997 and spoke directly to Ms. Tracy Odell. Ms. Odell discussed the child's identification, placement and program. She advised the appellant to enter a formal Appeal of the child's placement to the Dryden Board.

On March 25, the appellant was contacted by Mrs. Heather Wilson-Boast and was told that no consent forms (SP302, SP303) for the current proposed placement were sent out because of a mix up in communication between herself and Mr. Victor, Principal of Dryden High School. She was also informed that the meeting of other service providers in Dryden had taken place on March 21 and the consensus was that no local agency had resources to meet the child's needs.

The child had not attended Dryden High School since [the child's] suspension on February 21 but Heather Wilson-Boast indicated that the Board had advertised for a home instruction teacher to no avail. She went on to explain that plans were to provide home instruction in the appellant's home in two-three hour blocks of time and that some basic carpentry projects would be provided (bird houses).

On March 26, 1997, Mrs. Heather Wilson-Boast sent a letter to the appellants which arrived April 3. The appellant discussed the matter with Ms. Tracy Odell and Mr. A. Guthrie from the Regional Office of the Ministry of Education. On April 3, the consent forms and a letter of apology for tardiness arrived from Mr. R. Victor along with ten sheets of arithmetic exercises, a pre-cut wooden basket and some instructions for keyboarding. However, on April 1, 1997, the appellants sent a letter to Mr. Murray McFayden, the Director of Education, requesting an Appeal against the March 3 decision of the Identification, Placement and Review Committee.

On April 10, the appellants phoned Mr. Bill Dawes, a Dryden Board of Trustee, to apprise him of the child's situation. Subsequently, a meeting was arranged between the appellants and Mr. McFayden, the Director of Education. At this meeting, Mr. McFayden indicated that the Board would endeavor to hire a teacher and he also requested that the appellant become the teacher assistant. Several obstructions to progress ensued not the least of which was the Board's delay in appointing members to the Appeal Board.

To this point, the appellants had not signed the placement consent form (SP302, SP303) for the March 3 Identification, Placement and Review Committee placement decision and the child was at home not being provided with learning materials other than those mentioned above. No home instruction teacher was provided.

The appellant contended that the Board had again procrastinated in carrying out any of the proposals but at the same time, the appellants had not consented in writing to the March 3 Identification, Placement and Review Committee decision which was now the subject of Special Education Appeal.

The appellants entered into evidence a video tape of their child involved in activities at home: making cookies, washing the kitchen utensils; caring for the horses; delivering newspapers on a regular route and replenishing firewood from an outside pile to a wood chute in the garage. For most exercises, the child was supervised by an adult except for the firewood activities in which the child seemed to act independently. It was noted that the child showed signs of perseverative activity.

The appellants believed that since the letter of Appeal (December 13, 1997), the child was effectively suspended from school for an indefinite period. The Notice of Appeal acting as a "stay of placement".

Mr. Shanks asked about alternative placements particularly Hydra House and Kerry's Place as possibilities for a residential placement for the child. Mr. T E indicated the board had made no offer of financial assistance for such placements.

The appellant continued to explain that several physicians in Ontario and Manitoba had been consulted and a special program ([The child's] House) had been set up by the Ministry of Community and Social Services (M.C.S.S.) in cooperation with the Dryden Board. The placement met with some success but the child continued to exhibit aggressive behavior from time to time. The appellant referred to her child as a "gentle giant" but she indicated that her child "persevered" with certain procedures and tended to follow [the child's] own structured behavior patterns. When external suggestions changed the child's directions, the child gave verbal warning and then acted inappropriately by pulling hair, slapping or pinching. In fact, the child's teachers and support people had been physically injured by the child.

Mr. Shanks asked about medication that might be (or was) given to the child to assist in controlling the child's behavior. The appellant responded and explained the real difficulty involved in setting the appropriate dosage and also that some medication could not be tolerated because of undesirable side effects, e.g., gain in weight. The child was currently taking some medication. The Board indicated that they were not aware of this.

Mr. Shanks continued and indicated that while keeping the child out of school might not be best for the child, the Board had serious difficulty in providing a specialized program. He reviewed some of the incidents in which the child was reported to have injured [the child's] support staff and teachers. Since the child had not received a full assessment for eight years obtaining that assessment should be a prime concern. The appellant felt that there were no local professionals sufficiently versed in assessing autistic persons and that neither parent had confidence in Dr. Young. Dr. Young provides professional services for a fee to the Board of Education. No full assessment had been carried out. She referred to the fact that the

appellants had paid for an assessment by Dr. Garry Fisher of Winnipeg. Dr. Fisher was sworn in as a witness and his testimony was heard via teleconference on Thursday.

Mrs. Joan Schneider

The appellant called as a witness Mrs. Joan Schneider from the Patricia Centre, a mental health facility funded through M.C.S.S. Mrs. Schneider recited her qualifications and experience in the area of dealing with autism. Her expertise was unquestioned. Mrs. Schneider indicated that she had known the appellants and the child for some time. From her professional viewpoint, the child needed communications training along with opportunities to develop social skills and indicated that the child's general behavior was ritualistic in nature hence an appropriate placement should address the child's unique needs.

The appellant asked if Mrs. Schneider considered "home instruction" (the March 3 I.P.R.C. recommended placement) to be appropriate. In responding, Mrs. Schneider indicated that a "day placement would be better". She referred to the fact that assessments of various kinds had been sought but that the appellants would only consent to a speech and language assessment. Mrs. Schneider made reference to the Observational Report done on April 2, 1996 by herself and Luanne Richards-Denike (a speech pathologist). She also discussed Kerry's Place as a possible placement and was not entirely convinced it was the best place because of the family dynamics. She suggested a day placement at the Dryden Association for Community Living, Davis Wood, might be appropriate, as would Hydra House in Winnipeg.

On cross-examination by Mr. Shanks, it was stated that Davis Wood was a placement explored as was Hydra House and Kerry's Place. Mrs. Schneider explained that in the child's case, appropriateness of placement encompassed a great many factors. She did not support the request by the Board that the appellant become the teacher's assistant.

The offer made by the Board on June 26 subsequent to the Appeal Board was discussed by Mrs. Schneider and in response she indicated the following:

- A day placement such as Davis Wood had some merits because it would permit the family to remain intact yet provide a program for the child and the child would be home on weekends. To date no application for admission to Davis Wood has been made.
- A residential placement at Hydra House or Kerry's Place may be ultimately appropriate but a complete assessment would be required as a criterion for admission.
- She did not feel that involving the appellant as a teacher's aide was a good idea because the child would have difficulty in identifying [the child's] mother at home as the child's "mom" but in a school setting as [the child's] "support worker".

- She reported that the child had been without “special assistance at home for 18 months and the child needed to have such support.
- She generally agreed with the recommendations of the Appeal Board and in response to a question about finding an experienced person in Dryden to supervise the child and meet the child’s needs she indicated that such a person did not exist in Dryden.

The Appeal Board, which heard the discussion on June 2, 1997, supported the March 3, 1997 decision of the Identification, Placement and Review Committee and hence dismissed the Appeal. However, it went on to provide several non-binding recommendations. The Board accepted the Appeal Board recommendations. In a letter dated June 26, 1997, from Mr. McFayden, the appellants were advised of the decision and the agreement by the Board and of their right to appeal to the Special Education Tribunal under section 37 of the *Education Act*.

In her discussion, the appellant made it clear that her appeal to the Special Education Tribunal was against the March 3, 1997 I.P.R.C. decision and not the placement proposed by Murry McFayden in his letter to the appellant on June 26, 1997 (which was supported by the board but was not an I.P.R.C. recommendation.)

The appellant explained a number of issues relevant to the child’s proposed placement, which support a proposal for the child to be placed in a day program in the Patricia Centre. In a letter, of Dec. 17, 1997 to Mr. Shanks, Andre Breton, Acting Executive Director of the Centre, indicated that the Centre was “willing to consider various options” for service to the child and the appellants.

In her letter of appeal (dated July 31, 1997 to the Special Education Tribunal Acting Secretary, Mr. W. Wyman) the appellant appealed the decision of the Appeal Board of June 2, 1997 which had upheld the I.P.R.C. decision of March 3, 1997 which had recommended placement in Home Instruction for 7 hours per week.

The appellants did not agree with the appellant becoming a teacher’s aide as mentioned in the June 26 letter from the Board. However there were aspects of the Board’s proposal that appeared to be appropriate. The appellants were not in a position to agree with all of the conditions in the June 26 letter “before the plan will be implemented” as requested by Mr. McFayden.

Mrs. Heather Wilson-Boast

In response to questions from Mr. Shanks, Mrs. Wilson-Boast gave testimony as a Supervisory Officer with the Dryden board of Education. Mrs. Wilson-Boast referred to the *Procedures Manual for Special Education Programs and Services* and noted that programs were categorized as: School Based; System Based; and Alternative Programs. Section 27

programs and Home Instruction are listed as System Based Programs. Definitions, lists of Observable Characteristics, and Criteria for Identifying a Student with special needs are included to assist staff members in their preliminary identification at the local school level. Identifying an Autistic pupil is included in this material. Within the resources of the Board, autistic pupils are provided with special programs. To as great an extent as possible, programs for autistic pupils are provided within the regular classroom with resource teacher assistance. The Range of Placements was explained by Mrs. Wilson-Boast to the parents on Mar. 3, 1997.

The placement of the child at Dryden HS was difficult from the beginning. Mrs. Wilson Boast was involved in the on-going search for alternatives. On April 2, 1997 Mrs. Wilson-Boast wrote to the appellant "...the Principal of Dryden HS, the Director of Education and myself met with representatives from COMSOC, the Patricia Centre and the Dryden Association for Community Living. We explored alternative joint approaches to the provision of a program for the child. Unfortunately, it appears that the provision of such a program is not available at this time. We are prepared to once again explore the possibility of an external placement in the Province of Ontario or elsewhere, but we would need your agreement to accept such a placement should one be available.

In terms of the involvement of the other agencies, we were informed that the parent must make direct application to the appropriate agencies and that the Board cannot assume that responsibility..."

Richard Victor

Mr. Victor gave testimony as the Principal of Dryden High School. He has been very involved since September 1992 in the efforts by the Dryden Board of Education to find or develop an appropriate placement for the child.

The child entered Dryden HS one year early. A room, commonly referred to as the child's Room, was set up for the introduction of the child into the High School. Two teacher aides were hired from the Patricia Centre to work with the child and to assist with the child's gradual entry into the program. The staff of Dryden High School were not experienced in managing an autistic adolescent. Frequent Case Reviews were held to seek ways to cope with the child's behavior. Summaries of eighteen Case Reviews held between Jan. 25, 1995 and Jan. 30, 1997 were provided for information. Copies of Mr. Victor's principal's notes covering the period Sept. 1, 1992 to June 19, 1996 were provided to the Tribunal for information. While it is not within the mandate of the Tribunal to discuss the details of the child's program, the Tribunal notes that the program was modified to attempt to meet the needs of the student as understood by the staff in the Dryden HS placement.

One of the difficulties faced by Mr. Victor and his staff was the refusal by the appellant to give permission for a complete assessment including a psychological report. On June 19, 1996 the appellant gave consent for a vocational and a speech-language assessment for the child.

The record of the I.P.R.C. held June 19, 1996 indicates that the Committee agreed, that the child was identified as exceptional warranting placement in a regular classroom with resource support (exceptionality autism-Communication) The appellant did not sign this report.

Mr. Victor and his staff felt that the child's behavior had to be controlled. The child appeared to need to communicate and the child's aggression was one form of communication. In the opinion of Mr. Victor and his staff there was a need to find a placement outside of Dryden HS. The appellants agreed that the present placement at Dryden HS was not working.

Space outside of the school would have to meet Occupational Health and Safety standards.

Mrs. J. Schneider, Autism Coordinator from the Patricia Centre, supported Mr. Victor's recommendation that space outside of Dryden HS needed to be found for child's programs. A residential setting was the first choice. Such a setting would provide consistency for the child with a trained staff and a secure home base. Mr. Victor found that the parents had three basic concerns about a residential setting: the child would be leaving home; the child would be a long distance away from their care and direction; there were waiting lists for residential placement. In his testimony Mr. Victor reported the efforts, which Mrs. Wilson-Boast and he had made to obtain information about residential facilities for an autistic student e.g., Kerry's Place and Hydra House. Special programs had also been explored e.g. at Kerry's Place, Rage Behavior, a treatment program combining the use of drugs and behavior modification.

Mr. Victor reported that the child's attendance was becoming more erratic e.g. in June 1996, the child missed 5 days. The reason given was "the child's choice not to attend school." The incidents of pinching and hair pulling of the S.E.A.'s by the child were increasing at that time.

An I.P.R.C. review was requested by the parents and convened by Mr. Victor on March 3, 1997. The recommendation for the child's placement was changed to home instruction. The "Parental Consent to Placement" Form SP302 was not provided to the parents at that time. Mr. Victor sent the form and a letter of apology for the delay on April 3. The appellants did not sign Forms SP302 and SP303.

Mr. Victor reported that at the Case Conference held March 3, 1997 the appellants stated that:

- the present placement at D.H.S. was not working.
- the appellant needed support for the child while the child was at home.
- the child needed a rigid schedule.
- the Board should be obligated to provide more than 7 hours of teacher support per week.
- in preparation for independent living the child needed life skills, reading and writing.

- the child needed a quiet place to unwind.

Mr. Victor reported that he had assured the appellants that he and Mrs. Wilson Boast would investigate and if possible facilitate an alternative placement for the child with work as an acceptable component.

Mr. Victor reported that it was very difficult to obtain a teacher for this 7 hour per week position.

The Appeal Board which met on June 2, 1997 supported the I.P.R.C. decision of March 3 regarding the use of home instruction as identified in the board's Special Education Plan's Range of Placements. The Appeal Board also noted, that "no other placement is available at this time."

The Appeal Committee provided several non-binding recommendations as a basis for discussion. The following points have been considered by the Board and the appellants:

- the modified school day should be increased to 180 minutes or 15 hours per week
- system concerns for staff safety are legitimate
- the child's aggressive behavior must be extinguished
- the appellant should be employed as a teacher's aide for the first 3 months of the new placement to permit the other staff assigned to the child to learn the coping skills developed by the appellant
- a 3 month trial period should be started in Sept. 1997
- at the end of the 3 month period the placement should be referred to an I.P.R.C. for confirmation, modification, or termination
- a site other than the home or the Respite Room should be selected
- staffing for the first 3 months would be a .5 teacher, the appellant and 2 aides
- staff training in autism and behavior management must be provided
- home instruction as used in the board's Plan as a Special Education placement refers to a modified school day with individual instruction that may be carried out in a location other than a school.

Mr. Victor reported that all of the Appeal Board's recommendations had been or were in the process of being acted upon. Staffing had not been completed since the Appeal acted as a stay on all action or change. The former Family Studies room at Vanier School had been

selected as the site for this program. This room met the requirements of space and Occupational Health and Safety. The appellant had been invited to participate as a Teacher Aide in the three month program and in the training of the aides.

In its actions in response to the non-binding recommendations of the Appeal Board the Dryden Board indicated its desire to seek a suitable placement for the child.

On June 26, 1997 Mr. McFayden, Director of Education, wrote to the appellants to outline the Board's proposal for the child, subject to parental agreement. This letter contained the following items:

Length of Trial Placement - three months

- the matter to be referred back to an I.P.R.C. after the 3 month trail

Location - Vanier Building at Pinewood School

Time - instructional day 9:00 a.m. to 11:30 am. Mon to Fri.

Transportation - parent to provide and to be reimbursed at the Board rate

Assistants – the appellant is to be hired as a non-union assistant for 2 1/2 hours for each day the child attends school for the trail period. A second assistant is to be hired for 3 'A hours for each day the child attends school during the trail period.

Teacher - a home instruction teacher is to be hired for 7 hours per week to provide assistance with the academic program.

Supervision - program, placement and staff would be under the supervision of the principal of Dryden HS

Training - workers must receive the C.P.I. Training program

General - all steps to be taken to ensure the safety of staff and students including suspension if necessary

- the computer on loan is to be relocated to Vanier

- the proposal to be reviewed at the end of 3 months.

The Director's letter also stated that, "all of the above (requirements) would be completed and agreed to by the parents before the plan will be implemented."

Chairman's Note

The Tribunal finds the requirements concerning the role of the parents with regard to the attendance of the assistants and the need of the parents to agree to all of the letter's requirements to be heavy handed and not conducive to finding a solution to this problem.

The appellant wrote to the Acting-Secretary of the Special Education Tribunal to initiate her appeal on July 31, 1997.

Cross Examination of R. Victor by the appellant

In response to questions from the appellant concerning Kerry's Place, Mr. Victor replied that: cost was not the controlling factor in setting up a training program in autism for D.H.S. staff, the waiting period at Kerry's Place was approximately 2 months, the best assessment would be achieved by bringing staff from Kerry's Place to Dryden to work with the child and the staff.

Mr. Victor indicated that his dream was to have a residential centre in the Dryden area, however, at the moment that was not possible and the best second choice was the structured program currently proposed in the Board's letter of June 26 to the appellant.

Mr. Victor and Mrs. Schneider both feel that the appellant can teach her management skills to the S.E.A. staff in the time proposed.

Summary Statement of the appellant

In her Summary Statement, the appellant emphasized her opinion that in law, the Dryden Board of Education must provide an appropriate special education placement for the child. The Identification, Placement and Review Board and Dryden High School have effectively expelled the child from school for the child's behavior. "How can the child be suspended from school for behavior that is typical of autistic people?" In her opinion, she has never refused any assessment only those in which Dr. Young is involved because he is not experienced in dealing with persons with autism.

She went on to refer to the Board's June 26 letter. The appellants would not accept this placement, as it was conditional upon the appellant's involvement. She claimed that the board was in violation of Section 15 of the *Charter*. The child with such "special needs must have a special placement to benefit from equal opportunity."

The child should have full and equal access to school for academic, vocational and social learning. She cited the E case and indicated that the board must provide an integrated placement and a segregated placement only after all other placements have been exhausted.

Home Instruction for seven hours per week (Identification, Placement and Review Committee placement March 3, 1997) in a segregated setting will not meet the child's needs. The Board must also provide a trained teaching assistant to successfully deal with the child's exceptional

behavior.

She said that the system has proven that the children can learn academic content and every indication is that the child's behavior can be controlled under trained support persons.

At this point, the child is about to be assessed as an admission criterion to Hydra House hence, an assessment will be forthcoming.

The appellants feel that they have tried to deal with the Board "in good faith" but the Board had been uncooperative and has delayed procedures. The appellant has been under acute stress since the implementation of the June 26 placement depended solely upon her involvement as a teacher aid. She recognized that Dryden has limited resources for providing services to hard to serve learners.

The appellant said the Board has "lied" to the appellants on several occasions:

- At the I.P.R.C. of March 3, the result of which was that the child is not in attendance at any school.
- The Patricia Centre contrary to the Board's statements had not refused to provide services to the child.
- By its own admission, consent forms (SP302, SP303) which should have been produced on March 3 were delayed due to confusion of Board employees.
- The board has been deceitful and has "played games" in arriving at a possible placement for the child as proposed in the June 26, 1997 letter regarding the conditions stated therein.
- The onus to provide an appropriate special education placement rests with the Board and they are more concerned with the costs of such a placement and not with the child's best interest.
- The Board has not asked for permission to pursue a residential placement.
- The Board has been unwilling to provide or pay for a proper assessment the child.
- The appellant indicated that financial assistance had not been forth coming.

The appellant went on to say that the high school cannot overturn the March 3 Identification, Placement and Review committee decision and that the child needs a flexible placement with more opportunity than the seven hours of segregated home instruction. The child is entitled to a full-time placement.

In closing, the appellant indicated that she would like the Board to provide an appropriate, flexible placement for the child, as soon as possible, one that would address the child's needs as declared by the Identification, Placement and Review Committee of March 3, 1997.

Response from the Board of Education

Mr. Shanks made the following points in his reply:

- the issue is what placement will be least exclusionary from the mainstream and still be reasonably capable of meeting the child's needs
- what placement will be in the child's best interest
- in an ideal situation 24 hour consistent care would be available but that is not available for the child in Dryden
- the appellants' expert witness, Mrs. J. Schneider, agreed that the proposal to use Vanier School was the next best alternative
- despite the parent's views that the child is a "gentle giant" there is a list of occasions on which the child has pinched or pulled hair or slapped [the child's] aides, Mrs. Schneider or other students. Socialization must proceed after control is achieved.
- Mrs. Schneider does not have time in her schedule to deliver program for the child in a Board of Education location
- no residential setting is available in the Dryden area
- the Vanier setting as proposed in the June 26 letter from the Director of Education to the appellants is to be an appropriate placement which offers a quiet location where life skills could be taught and opportunities for socialization are available.

Mr. Shanks requested that the appeal be denied because the appellant had failed to provide objective evidence to show that the child had not been offered a placement suited to [the child's] needs.

Decision re: the child

The Tribunal unanimously denies the appeal and affirms the decision of the Appeal Board of June 2, 1997.

The Basis For The Decision

The law requires that an Identification Placement and Review Committee make a report which identifies the child's exceptionality and recommends the placement of the child. On the basis of the evidence presented the Tribunal concludes that the I.P.R.C. of March 3, 1997 did just that. There is no evidence that the Committee was not properly constituted. There is no dispute as to the identification and in spite of the criticism leveled at the report with respect to placement, the evidence established is that the contents of the report relating to placement are within the legal requirements.

The Appeal Board, which met June 2, 1997, was properly constituted. The Appeal Board agreed that a home instruction placement as identified in the D.B.E. Special Education Plan's Range of Placements was appropriate for the child at that time. The Appeal Board stated that it was influenced in its decision by the agreement of both parties that Dryden High School was no longer an appropriate placement for the delivery of the child's program and no other facility had been identified.

The Appeal Board continued and made several non-binding recommendations concerning the placement and the details of the proposed program for the child.

The D.B.E. acted on these non-binding recommendations, which were not considered by the I.P.R.C. and therefore were not part of the recommended placement.

The appellants decided to appeal the decision of the Appeal Board, which upheld the March 3 I.P.R.C.

This recommendation was to place the child in a Home Instruction program for seven hours per week.

The Tribunal members are unanimously of the opinion that the report of the Appeal Board in the matter of the child meets the legal requirements and for that reason the Appeal must be dismissed. On the Basis of the information presented by both the Appellant and the Respondent the Tribunal found errors of judgment and performance. The data presented indicate that the best interests of the child became lost in the territorial fighting between the parent, the School Board staff and the Board.

Costs

There will be no order as to costs.

Obiter Dictum

The following comments do not constitute a part of the decision in the case of [the child]. We make them, however, for the benefit of both the Appellant and the Respondent.

From the child's school history described by the child's parents, the board and written in the exhibits, it is clear that many and varied strategies have been undertaken to meet the child's needs. It is clear that these strategies have changed over time as the child has grown. Evidence would support the fact that most have been successful because the child is a high functioning young person despite [the child's] autism. This is not the case with many who have autistic characteristics. The parents have been very dedicated in doing what is best for the child.

[The child] is no longer a child – the child is a big person and the outbursts of unacceptable behavior must be controlled. In order to control the behavior, it is obvious that a complete assessment is needed. Since the child has only two years of formal schooling remaining under the Dryden Board, time is very important and none can be lost. The appellants must cooperate with officials from the board and the board must make haste to “open doors” to create an enabling future for the child.

An appropriate agency with which to deal is the Geneva Centre for Autistic Persons. Geneva Centre based in Toronto is the provincial resource centre for persons with autism. The recommendation to have Geneva Centre carry out a complete assessment of the child's needs must be pursued without delay. It is appropriate that the Dryden Board pay for this assessment.

Geneva Centre provides a full independent assessment and programming service in Ontario and they have indicated a willingness to assess the child's needs. When the final report with specific recommendations is received, the board must be committed to comply and the appellants must show a willingness to cooperate.

In order to ensure that the child's rights under the *Education Act* are maintained, the report with recommendations from Geneva Centre must be shared by parents and the board and studied by an Identification, Placement and Review Committee.

Through this procedure, the child's needs can be formally identified and the appropriate placement named (regular 305, Section 4(1)). It would also maintain the appellant's right to an appeal mechanism.

The Tribunal hopes that both parties will redirect their time, resources, and energies toward mutual and positive support for the child's best interest.

Wayne Tompkins, Chair _____

Donald Reilly, Member _____