



ONTARIO SPECIAL EDUCATION (ENGLISH) TRIBUNAL

File#2010-02 [d]

IN THE MATTER OF the *Education Act*, R.S.O. 1990, c. E.2, as amended, ss. 57(3),
IN THE MATTER OF *Ontario Regulation 181/98*,
AND IN THE MATTER OF the minor child born in 1994

BETWEEN

Mr. and Mrs. B. R., Appellants

-And-

The Halton District School Board, Respondent

SUPPLEMENTARY DECISION ON THE APPELLANTS' MOTION

Tribunal Members:

Eva Nichols
Janice Leroux
Jim McCaughey

Chair
Member
Member

INTRODUCTION:

[1] On October 17, 2011, the appellants asked the Tribunal to no longer remain seized for the purposes of the implementation of the Tribunal's orders, made on February 15, 2011 and June 30, 2011.

[2] The Tribunal sought submissions from the respondent Halton District School Board (HDSB). The HDSB objected to the request by letter, dated November 2, 2011. The Tribunal sought further submissions from the HDSB, which were received on November 24, 2011.

[3] The Tribunal sought a response from the appellants. The appellants, on November 28, 2011, objected to the HDSB's submissions on the basis that they were delivered outside the time set in the Tribunal's *Practice Direction on Seized Cases*. This objection is addressed in the reasons below. Further, the appellants once again stressed their objection to and disagreement with the Tribunal's orders.

THE HISTORY OF THE APPEAL:

[4] On December 15, 2010, the Tribunal issued an Interim Decision (2010-02[a]) with reasons to follow, in order to facilitate the student's return to school as soon as possible and no later than January 2011.

[5] On February 15, 2011, the Tribunal issued its final decision and reasons on the merits of the appeal in accordance with ss. 57(5) of the *Education Act* (2010-02[b]).

[6] The Tribunal remained seized of the appeal with respect to the implementation of the following orders set out in paragraphs 216 – 219 of the February 15, 2011, decision:

[216] The Tribunal orders the HDSB to maintain the student's identification as an exceptional student.

[217] The Tribunal orders the HDSB to arrange a full psycho-educational assessment for the student as soon as possible, in order to identify the student's strengths and needs and to determine the most appropriate ways to meet the student's academic, behavioural and communication needs. As the student is sixteen years of age, the student is presumed to be capable to consent to such an assessment (see the *Health Care Consent Act 1996*, S.O. 1996, c. 2 Schedule A, s. 1(c)(iii) and the *Substitute Decisions Act, 1992*, c. 30 s. 2(2) and (3)). These Acts indicate that everyone who has attained 16 years of age is presumed to be capable to make their own treatment decisions, unless the person doing the assessment has reasonable grounds to believe that he or she is incapable of making those decisions. As an assessment is clearly in the student's best interests, the Tribunal expects the parents to encourage the student to consent to an assessment and to facilitate that assessment, including giving substitute consent for the student, should any issue regarding the student's capacity to make an informed decision about an assessment arise.

[218] The Tribunal orders the HDSB to arrange an Identification Placement Review Committee (IPRC) meeting as soon as possible after the psycho-educational assessment results are available. At this IPRC, the student's

category or categories and specific exceptionality or exceptionalities are to be determined. The IPRC must also determine the most enabling placement for the student to meet the identified strengths and needs. The IPRC Statement of Decision will also identify the appropriate programs, services, and accommodations that will be provided to meet those needs.

[219] The Tribunal orders the HDSB to arrange an appropriate interim Self-Contained Special Education Class placement for the student in consultation with the parents.

[7] A teleconference to address the HDSB's concern about the implementation of the Tribunal's orders was held on April 6, 2011.

[8] Following the teleconference, the parties advised the Tribunal that two of the Tribunal's four orders have been implemented by the HDSB, but that the appellants did not consent to the psycho-educational assessment ordered in paragraph 217 of the February 15, 2011, decision. As a result, it had not been feasible to arrange an IPRC, which was contingent on the results of such an assessment, as required by paragraph 218 of the February 15, 2011, decision.

[9] On May 24, 2011, the appellants wrote to the Tribunal asking if they could request an IPRC to discuss the student's placement for September 2011. On May 25, 2011, the Tribunal responded stating that it is the Tribunal's expectation that an IPRC will be arranged for the student following the psycho-educational assessment and prior to the end of the 2010/2011 school year.

[10] During the month of June 2011, the parties communicated many times with the Tribunal regarding the implementation of the Tribunal's orders. The appellants asked the respondent school board to arrange an IPRC for the student. They also stated that they would not agree to the student undergoing a psycho-educational assessment or allow the student to attend anything other than a regular secondary school program at their local secondary school.

[11] Counsel for the HDSB wrote to the appellants to state that the HDSB will not schedule an IPRC for the student, until the psycho-educational assessment ordered by the Tribunal is completed.

[12] On June 22, 2011, the Tribunal and the parties participated in a teleconference regarding the implementation of the Tribunal's orders.

[13] During the teleconference the appellants reiterated that they were not prepared to consent to the student undergoing a psycho-educational assessment. With reference to the student giving such consent, the student's mother said that the student does not understand what such an assessment is and therefore, cannot give consent to the assessment.

[14] The parties agreed that an IPRC would be scheduled for the student at the earliest opportunity.

[15] On June 30, 2011, the Tribunal issued a supplementary decision (2010-02[c]), extending the time the Tribunal would remain seized to December 31, 2011 and making the following order at paragraph 36.

[36] The Tribunal orders the HDSB to comply with subsection 15 (1) of Regulation 181/98 to obtain an educational assessment for the student. The HDSB must ensure that the IPRC considers the results of that assessment before making any decision about the student's identification and placement, and before recommending special education programs, services and accommodation to meet the student's strengths and needs. Such an educational assessment, carried out by a teacher, does not require parental consent. The student's IEP for the 2011-12 school year shall be based on the educational assessment and the IPRC statement of decision. In accordance with the legislation, the IEP will be prepared within 30 days of the IPRC date."

[16] On June 29, 2011, the HDSB convened an IPRC that confirmed the student's identification as an exceptional student and the student's placement in a self-contained classroom, in accordance with the Tribunal decision.

[17] The 2011-2012 school years began on September 6, 2011. The student did not return to school and has not attended school throughout the current school year. The respondent advises that the student is not presently attending school and the appellants have not indicated that the student is participating in any alternative educational program, which would allow the student to be excused from school attendance.

[18] Throughout September 2011, the Tribunal received numerous letters from the appellants challenging and disagreeing with the Tribunal's decision and orders.

[19] On October 17, 2011, the appellants requested that the Tribunal change its decision and end the period for which the appeal has been seized.

[20] On November 2, 2011, the HDSB advised that it opposed the appellants' request. On November 8, 2011, the Tribunal asked the HDSB to provide further submissions, if there were issues arising from the implementation of the Tribunal's orders which required further adjudication by the Tribunal. These submissions were due within 14 days, in accordance with the Tribunal's *Practice Direction on Seized Cases*.

[21] The HDSB's November 24, 2011, submissions noted that the appellants have not permitted the student to be assessed and that the HDSB has, therefore, been unable to complete the IPRC, as ordered at paragraph 218 of the February 15, 2011, decision. The HDSB requested the Tribunal to remain seized until its orders have been fully implemented. Further, the HDSB requested the Tribunal to order the appellants to immediately return the student to school.

[22] On November 28, 2011, the appellants wrote to the Tribunal repeating their disagreement with the Tribunal's decision and orders and objecting to the respondent's submissions on the basis that they were late. They asked that the Tribunal not consider these submissions when making its decision on their request.

DECISION:

[23] The appellants' request is granted. The Tribunal will not remain seized of this matter and has closed its file (OSET 2010-02), effective the date of this letter.

REASONS:

1. The Tribunal's decisions and orders are final and binding on the parties to an appeal, in accordance with subsection 57(5) of the *Education Act*. This does not depend on the Tribunal remaining seized.

2. The Tribunal notes that although its orders remain outstanding, the appellants no longer wish to participate in the Tribunal process. Until the student returns to school and is assessed, the Tribunal's orders cannot be fully implemented, in spite of the fact that the Tribunal's decision and orders were made in the student's best interest.

3. The Tribunal agrees that the HDSB's November 24, 2011, submission was late. However, the delay was short (two days) and as a result there was no evidence of prejudice to the appellants.

4. There are no further steps that the Tribunal can take to assist in or facilitate the implementation of its orders. The Tribunal has no jurisdiction to order the student's return to school. The *Education Act* provides a school board with a process by which it can compel the attendance of a student under the age of 18. The Tribunal has no role in that process.

[24] In conclusion, the Tribunal hopes that its existing orders will be implemented in the student's best interest and that the student will be given the opportunity to participate in an appropriate special education program at the earliest opportunity. The student deserves no less.

[25] This supplementary decision on the appellants' request has the unanimous support of the hearing panel and is signed by the panel chair on behalf of the panel.

Eva Nichols, Chair

December 2, 2011