



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*, as amended. AND IN THE MATTER OF the minor child, born 1976.

BETWEEN

DM and GM

Appellants

-and-

THE SIMCOE COUNTY BOARD OF EDUCATION

Respondent

Tribunal Members:

Ken Weber  
Janet Quintal  
Dianne Longboat\*

Chairman  
Member  
Member

For the Appellants:

DM and GM

For the Respondent:

Ms. Brenda Bowlby

The hearing was held in Barrie, Ontario on October 13, 1992, December 2, 1992, and on March 9, 1993.

\*Chairman's Note: On the first morning of the hearings, the Tribunal learned that Ms. Dianne Longboat would be unable to attend. Both 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.

## **The Appellants' Request**

That leave be granted to appeal the identification and placement of their child, to a Special Education (Regional) Tribunal on the following grounds:

1. That there were variations in procedure at the I.P.R.C. meetings and at the Appeal Board hearing, inconsistent with the requirements of the *Education Act*, Regulation 554/81, as amended under *the Act*, and monographs issued from time to time from the Special Education Branch under the authority of the Minister of Education.
2. That the decisions of the Simcoe County Board of Education (SCBE) regarding placement and programming for the child are motivated more by financial considerations than by the child's best interests.
3. That the SCBE has not responded to concerns and recommendations unanimously emphasized by the Appeal Board.
4. That communication has broken down between the appellants and the SCBE.
5. That the Ontario Student Record and Appeal Record for the child contain inaccuracies, which portray the child incorrectly.
6. That the child's academic and social needs are not being met in the child's present placement.
7. That child is not being adequately supervised in the child's present placement.
8. That a complete health assessment was not considered at the IPRC or Appeal Board hearings.
9. That there is confusion about learning disabilities (among the SCBE) and confusion about interpretation of assessment results (by the SCBE), which contributes to the inappropriate placement of the child.

## **The Appellants' Further Request**

The appellants further request that the child's identification be changed to read: 'exceptional: Communication (specific learning disability)'.

## The Respondent's Reply

(Note 1: Prior to these proceedings the respondent offered to waive the leave hearing in order to proceed directly to a full hearing on the merits.

Further, because the processing of an application for admission of the child to a provincial school (*Trillium*) was under way at the time the leave hearing began, the respondent offered to delay a hearing on the merits until the application process was complete.

The appellants declined to waive the leave hearing. By extension therefore, the second offer did not apply.)

(Note 2: The SCBE grants the wishes of the appellants that the child's identification be changed to 'Exceptional: Communication (specific learning disability)'. This indication is made on the record during the leave hearing.

Accordingly, the Tribunal notes that the identification of the child is not an issue in this leave hearing.)

The respondent asks that the appellants' request for leave to appeal the placement of the child to a Special Education (Regional) Tribunal be denied, on the following grounds:

1. That proper I.P.R.C. and Appeal Board procedures as delineated in *the Act* and attendant regulations were followed in regard to the child, and that in any case the Tribunal has no jurisdiction to deal with procedural matters in proceedings which precede the leave hearing.
2. That the SCBE's placement of the child is not motivated by financial considerations, and that in any case, such a matter is outside the jurisdiction of the Tribunal.
3. That a school board's alleged failure to follow recommendations of an Appeal Board is not grounds for granting leave; that any recommendations made by the Appeal Board in the matter of the child are beyond its mandate according to Reg. 554/81, s.7(9).
4. That, although the SCBE concurs that communication between parties has indeed broken down, this is not a basis on which to grant leave.
5. That the Special Education Tribunal has no jurisdiction in the matter of a pupil's Ontario School Record.
6. That child's academic and social needs are being met.

7. That the child is adequately supervised in the child's present placement, and that in any case, (in)adequacy of supervision is not an issue on which leave can be granted.

8. That the I.P.R.C. and Appeal Board did receive and consider health assessments of the child as provided by the appellants.

9. That in the view of the SCBE, the child does not meet all the criteria for the identification 'specific learning disabled', but the Board accepts the appellants wish for this identification in any case (See above).

## **Decision**

It is the unanimous decision of the Tribunal that leave to appeal be denied, because there is no issue to be appealed.

## **Reasons For Decision**

In the opinion of the Tribunal, there are two principle factors in this case that affect whether or not the child's situation should go forward to a full hearing on the merits: namely, whether the child's current placement (and by extension, the child's program) is in the child's best interests; and, whether there are matters in the child's case, that if put before a (Regional) Tribunal for a full hearing on the merits, would cause such a Tribunal to make orders changing the child's placement.

On the first issue, the child's present success in school confirms to this Tribunal that the child's current placement is in the child's best interests. On the second, while the Tribunal heard diverging interpretations of the same matters and elements in the case, and while it is clear that the very serious erosion of trust between appellant and respondent accounts for much of this divergence, we did not hear any evidence at all that, in our opinion, would cause a further Tribunal to make an order changing the child's placement.

Response to each of the appellants' requests and respondent's replies follows here.

1. The Tribunal heard no evidence of a violation of due process by the respondent that affected the child's placement in a way that would warrant the granting of leave.

2. This is not a matter for a Special Education Tribunal.

3. The Tribunal notes that the Appeal Board upheld the decision of the I.P.R.C. in the child's case, and whether or not comments by an Appeal Board are within its mandate, the fact remains that we had no evidence presented to us to indicate that the SCBE is not acting in the child's best interests (See also #6)

4. This is not a matter for a Special Education Tribunal.

5. This is not a matter for a Special Education Tribunal.

6. The Tribunal received no evidence on which to make a reasonable conclusion that the child's academic and social needs are not being met.

7. This is not a matter for a Special Education Tribunal unless it is a clear outcome of an inappropriate placement.

8. The health data and health information presented to the Tribunal in exhibits establish only probable cause for the child's learning disability. Irrespective of whether or not these data were received and considered by the I.P.R.C. and Appeal Board, they do not offer reason or cause to change the child's placement.

9. The child's identification, as requested by the appellants, is agreed to by the respondent.

### **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 this child. We make them, however, for the benefit of both appellants and respondent, and do so in the hope of bringing a pause to the continuing, difficult, and strained situation between the parties, so that both will attempt to redirect the resources and considerable energies expended in this case, away from conflict, and toward a mutual and positive support of the child's best interests.)

Re: #1. The respondent's argument notwithstanding, it is the Tribunal's opinion that if in I.P.R.C. or Appeal Board hearings, parents are denied the due process guaranteed by the *Education Act* and attendant regulations, this might be grounds for appeal, if it can be established that the denial of due process may have influenced the identification and placement that is in a pupil's best interests. However, in the child's case, the arguments over due process are, in our view, largely a product of the breakdown in communication acknowledged by both parties. Further, while there may have been a few minor anomalies in procedure throughout the extensive, ongoing dealings between the appellants and the SCBE regarding the child, none of these, in our view, affected the child's best interests.

Re: #3. While Regulation 554/81 (as amended) does not make provision for an Appeal Board to offer commentary and recommendations, in our view, it is reasonable for such a board to do so, especially if it is acting in a pupil's best interests, and if by doing so, it can arrest the further development of an adversarial situation.

Re: #4. We note the importance for the child's sake, of reestablishing effective lines of communication and a basis of trust between board and parents. And it is our hope that, inasmuch as both parties have consistently had the child's best interests at heart, it will be possible to effect such a reestablishment.

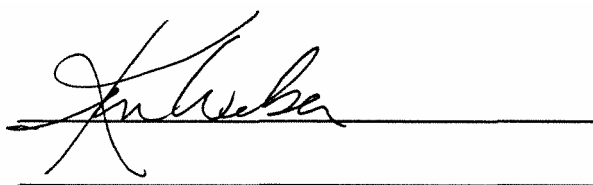
Re: #6. We received considerable evidence that suggests the child's academic needs are being met quite effectively. Further, the adjustments and adaptations in the child's program over the past several terms, suggests that the SCBE is attentive to the child's changing needs, and to the wishes of the child's parents, within parameters that can reasonably be expected of a school board in the case of an exceptional pupil.

The matter of social needs is much more difficult to assess. Secondary schools are large, socially complicated environments. For students with a learning disability, specifically the child in this case, the challenge of accommodating the demands of such an environment can be a major one. Whether any or all students with learning disabilities can have their social needs met better in a more contained environment is moot. In the child's case, we heard no evidence on which to conclude that the child's social needs would be addressed any differently, or any better, in a smaller, more contained environment, than the one the child is in now.

Re: #7. We note that several of the situations cited by the appellants, as examples of ineffective management of the child's case by the SBCE, are ones which grew out of the very unique arrangements established for the child, at the request of the appellants (such as attending two schools in the same day). While the Tribunal makes no comment or judgment on the ability of either party to oversee special arrangements, we feel it is germane, in this case, to point out that the more specialized and uniquely individualized a placement becomes, and the more intervention there is made on behalf of a pupil, the greater is the potential for misinterpretation and disagreement over what should or should not take place, and over who should have responsibility for it.

Ken Weber, Chair

Janet Quintal, Member

A handwritten signature in cursive script, appearing to read "Ken Weber", is written over a horizontal line. A second horizontal line is drawn below the first one, creating a space for the signature.

2 April 1993