



ONTARIO SPECIAL EDUCATION (ENGLISH) TRIBUNAL File#16

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 1978;

BETWEEN

J B and RB

Appellants

- and -

THE CARLETON BOARD OF EDUCATION

Respondent

Tribunal Members:

Kenneth J. Weber
Eva Nichols
Frank J. Turner

Chair
Member
Member

For the Appellants:

JB

For the Respondent:

Harry Gervais

The Leave-To-Appeal Hearing was held in Ottawa, April 14, 1992.

Introduction

The appellants applied to the Ontario Special Education (English) Tribunal, pursuant to Section 36 of the *Education Act*, for leave to appeal to a regional tribunal in respect of the identification by the Carleton Board of Education of their child, as an exceptional pupil.

The Applicant's Request

On behalf of the parents, the appellant states that their child should have been identified 'gifted' by the Carleton Board of Education Identification, Placement, Review Committee (IPRC) and requests the Tribunal grant leave to request a full hearing by a Regional Special Education Tribunal.

The Respondent's Reply

On behalf of the Board, Harry Gervais contends that both the IPRC and the subsequently convened Special Education Appeal Board acted properly and within the rules set down in the Act and in O.Reg. 554/81; that the IPRC and Appeal Board identified the child appropriately; and requests the Tribunal to dismiss the appellant's application.

Decision of the Tribunal

It is the unanimous decision of the Tribunal that the appellants be granted leave to appeal to a Regional Special Education Tribunal in the matter of the identification of their minor child, as an exceptional pupil.

Reasons For Decision

1. The decision of the original IPRC regarding the identification of the child was made principally, indeed almost exclusively, on the basis of results from a Wechsler Intelligence Scale for Children--Revised (1974) test. It is our unanimous opinion that whether or not this procedure is a policy of a board of education, it is too narrow a basis on which to identify a pupil like this child, as gifted or not gifted.
2. It is also the opinion of the Tribunal that given the Carleton Board of Education's policies and procedures in the matter of identifying gifted students, as adduced during the hearing, and as published in its Revised Comprehensive Plan, 1991, there have been sufficient procedural variations in the identification of the child to warrant a re-examination of the child's case.
3. Further, the Tribunal holds that there were deficiencies in the Appeal Board process in the child's case in that the Board did not permit the presentation of what may have been further relevant information. [See Appeal Board Minutes in Respondent's Exhibit One (R-1): pp. 28-32; and Appellant's Exhibit Two (A-2): pp. 2-3.] [See also O. Reg. 554/81 (8) and CEB Revised Comprehensive Plan, 1991.]

The Tribunal feels that, given the above reasons, it is not only just but also reasonable that the appellants be granted leave to request a full hearing so that all elements in the child's identification may be brought forward and considered.

Obiter Dicta

1, The Tribunal wishes to emphasize that it has not offered an opinion in this ruling, as to whether the child is gifted or not gifted.

2. While a tribunal in a leave hearing is not empowered to make a decision regarding identification or placement, we feel that a constructive observation is within our purview:

We are unanimous in our feeling that the hearing process revealed a reservoir of good will, reasonableness, and genuine concern for the child's best interests on the part of both appellant and respondent. Accordingly, we express our hope that both sides will consider making at least one more attempt at resolving this matter informally.

Kenneth J. Weber (Chair)

Eva Nichols (Member)

Frank J. Turner (Member)

29 April 1992