



ONTARIO SPECIAL EDUCATION (ENGLISH) TRIBUNAL File # 25

IN THE MATTER OF THE Education Act, R.S.O. 1990 C.E.2, as amended: and in the Matter of Ontario Regulation 18 1/98 made under the Education Act as amended; and in the Matter of a minor child born 1983

B E T W E E N:

Mrs. M	Appellant
. . . and -	
The Lakehead Board of Education	Respondent

TRIBUNAL MEMBERS:

Wayne Tompkins, Chair
Marilyn Thain
James Clemens

APPEARANCES:

CM	representing herself
Jennifer A. Scott	Counsel for The appellant May 17,18, 19, 1999
Donald B. Shanks	Counsel for the Lakehead Board of Education
Peter Ferren	Secretary to the Tribunal

Introduction

This Tribunal convened on November 17 and 18, 1999 as a result of the urgent requests of Mrs. M, Appellant concerning the education of her child. The appellant had contacted the Ministry of Education on numerous occasions in 1998 claimed that her health was poor and therefore that her appeal should be heard before December 1998.

The Tribunal met November 17 and 18 1998; February 3 and 4, 1999; May 17, 18 and 19, 1999 in Thunder Bay.

The appellant came to the November 17 hearing without material organized and ready for presentation. She did not have either a statement of her reasons for requesting the tribunal ready for presentation or a prepared opening statement.

O.S.R. Card Review

During the weeks leading up to the Nov. Sessions of the Tribunal the appellant had requested a review of the contents of The child's O.S.R. card. The report from that review committee did not require any material to be removed from the O.S.R. card.

Reasons for the Request for a Tribunal

The appellant on behalf of child brought this case forward to appeal the identification and placement of her child.

The appellant, agreed that the focus for this Tribunal hearing is to be on identification and placement, looking from grade six forwards. (Transcript Nov. 17 p. 23 and 30)

The appellant represented herself at the Tribunal on Nov. 17, 18, 19, 1998 and February 2 to 4, 1999). Counsel, Jennifer A. Scott represented the appellant on May 17 — 19, 1999. Throughout the days of the hearing (Nov. 17 & 18 1998, Feb. 02 - 04, 1999, the same issues were repeatedly referenced by the appellant. These issues were debated over those days that she was not

represented by counsel and included:

- Her repeated requests for counsel and the right her child had to be represented by counsel. (Transcript Nov. 17 p 36) (Transcript Feb 3 p 3, 18,52). Although she had received approval of 10 hours of legal aid (Transcript Nov. 17 p 36). the appellant could not find a “lawyer” to assist her. She stated that the failure to get counsel was based on the following: she was unable to find a lawyer; conflict of interest, lawyer didn’t have expertise in educational law; the lawyer didn’t have time, and many didn’t take legal aid cases. The best the appellant could do up to May 17, 1999 was to have Justice for Children and Youth. Toronto “act as a resource on the legal issues for whoever she retains here.” (Transcript Nov. 17 p. 37)
- Her repeated requests for postponement of the tribunal due to the fact she did not have legal counsel (transcript Nov 17 p. 39) and she did not feel confident to “be the person to be cross examining and making questions of witnesses” (Transcript Nov. 17 p. 39, 61. 64, 66).
- She requested “postponement based on the Charter of Rights & Freedoms until she could have proper legal counsel”, (Transcript Nov. 17 p. 50 & 59)
- Her repeated statements that her son was victimized in school (Transcript Nov. 17 p. 45 & 46)

The appellant was not prepared to call a witness and to begin the hearing on Nov. 17, 1998. The appellant argued to have the Tribunal summon witnesses whom she might want for her case.

Correspondence from Mr. Wyman to the appellant prior to setting the November 17 and 18 dates clearly indicated to the appellant that she should prepare for the hearing with her lawyer

because the Tribunal could proceed even though she (the appellant) might decide to request a

further delay or a postponement. (Transcript Nov. 17 & 18, 1998 p. 51)

By consent of the parties Mr. Shanks called his first witness, Mr. John Lester to testify for the Board.

Testimony of John Lester

The Board's first witness, John Lester, principal of Special Education with responsibility for the delivery of special education services to all schools, presented evidence that the IPRC of February 27, 1997 was one in a long series of IPRCs and assessments beginning in 1993. None of the earlier IPRCs had been appealed. Mr. Lester explained that the IPRC of February 27, 1997 was a "system IPRC" involving three principals who had experience with special education programs, but had no previous involvement or awareness of the issues regarding the child or the child's mother, The appellant. The purpose of a system IIPRC "is to bring objectivity to the proceedings as much as possible." (Transcript Nov. 12&18, 1998 p. 120).

The Identification and Placement from the February 27, 1997 TPRC was appealed. The three educators who heard the appeal upheld the February 27th decisions regarding both Identification and placement and made a number of recommendations (Exhibit 1, Tab 7a). The decision and recommendations of the Appeal Board were duly communicated in writing to the appellant. (Exhibit 1, Tab 7b). Evidence in the letter from Dave Fredrickson, Superintendent of Special Education, to Ms. M (Exhibit 1, 7b) showed the willingness of the board to "proceed immediately to implement the recommendations outlined in the report". Mr. Fredrickson wrote, ~. We are certainly willing to reconvene the identification Placement and Review Committee to consider a placement in the Child Adjustment Program at Algonquin along with the other non-binding suggestions.. as well we would be prepared to comply with all of the recommendations made on page three of the report and would request that the IIPRC consider including them in

their decision.” (Exhibit 1, Tab 7b). Shortly after receiving Mr. Fredrickson’s’s letter, The appellant indicated that she would not accept the decision of the Appeal Board and her intention to request a Special Education Tribunal.

The appellant claims that there was significant evidence that supported the fact that the child had a learning disability.

Citing the Psychological Assessment Report of Dr. Netley, Feb. 09, 1998, (Exhibit #1, Tab 9), it stated “the child would learn best and present fewer management problems in an environment which is supportive and presented the child with an individualized type of program that was appropriate to the child’s level of skills.” Dr. Netley’s report also stated “The child falls within the average ability range and that the child’s achievement is significantly below the level that would be expected of a student with average ability.”

The appellant stated that “the Board disregarded any problem the child was having with visual perception or receptive language (Transcript Feb. 02 p. 112)

The formal identification of learning disability - communicational was made on Mar. 23, 1993 (Exhibit 1, Feb. 21). This identification was changed by a system [PRC recommendation on Feb. 10, 1997(Exhibit 1 Tab 6) to behavioural/learning disability. This changed identification resulted in a recommendation of a behaviour adjustment program at Shuniah School.

Mr. Lester stated that the issue of the order of exceptionalities is not that important but rather the needs of the child are more important. He also stated the computer system only had room for one code.

The Board was concerned to have the child return to school as soon as possible since the child had been “out of school for virtually a year with only a few weeks of home instruction (Transcript Nov. 17 & 18, 1998 p. 130). Three choices regarding the child’s placement were offered through

correspondence to the appellant: Sir John A. Macdonald School (the child's placement at the time of the IPRC); the Shuniah School Child Adjustment Program, or a continuation of Home Schooling. The Shuniah School placement involved the provision of a full-time special education support person for the child in a class of between six and nine students. The Shuniah School placement was offered on the basis that the child's attendance in the program at that school would not be used by the Board to prejudice any case that the appellant might wish to place before the Tribunal.

The board admitted that "...there is a dispute by the appellant about whether or not she ever agreed to have the child in that program... and that the Board did it unilaterally without any authorization..." (Transcript p. 136 &137). The Board then presented three letters to show that it believed that it was acting with the assent of the appellant. A letter (Exhibit 2) to Mr. E. Van Voorst, a lawyer appointed by the court at the request of the Children's Aid Society, confirmed a telephone conversation regarding the placement of the child in the Child Adjustment Program at Shuniah Street school on a "without prejudice basis". A letter to The appellant (Exhibit 3) stated that she had delivered her child to Shuniah Street school and indicated that "We will take the child's presence there to signify your intent to have the child attend the Child Adjustment Program and, accordingly, will register the child in The Child Adjustment Program at Shuniah Street School effective today (November 14, 1997)..." The Board admitted that, in a letter (Exhibit 4) from the appellant to the Director of Education for the Lakehead District School Board, the appellant stated that she did not agree with the decision reached by Mr. Van Voort, but she continued to send the child to Shuniah Street School. Since The appellant had "...demonstrated in the past that if she did not want the child to be in a program in the Lakehead Board of Education that she would not have the child attend school", Mr. Lester concluded "we can assume that because of the appellant

having the child attend on a daily basis that she was at least approving of the child's current educational program and placement." (Transcript Nov. 17 &18 p. 163).

An IPRC, subsequent to the one under review, held on June 4, 1998, maintained the identification, but recommended that the child be placed in grade nine with modified programming and scheduling. At the time of the hearing, the child was indeed registered in grade nine at Hammerskjold High School. Mr. Lester explained that the child had not been placed in a behavioural class but in a regular class with modifications to the curriculum. Mr. Lester also indicated that the child received the assistance of a special education support person to help the child with program modification, assignments, and organizational skills for a minimum of 243 minutes of a 300 minute-day.

Behaviour Changes

The Board also entered evidence which showed certain negative changes in The child's behaviour between the IPRC of March 4, 1996 which identified the child as Code 04, Learning Disabled, only and the IPRC of February 27, 1997 which identified the child as both code 01 (socially maladjusted and emotionally disturbed) and Code 04 (Learning Disabled). The evidence submitted involved suspensions; psychological reports, and testimony by one of The child's teachers.

Between May and the end of November 1996, the child was suspended three times. On May, 6, 1996, the child received an "in-school" suspension for the child's behaviour in the classroom and playground; inappropriate language to school personnel, and defiant attitude towards the principal. The child and the child's brother were not allowed to ride the school bus from May 21, 24, 1996 for earlier unacceptable behaviour on the bus. Finally, the child was suspended from school from November 21 to November 25, 1996. This suspension was supported by a list of nine

negative incidents between September and November of 1996. This suspension was appealed by the appellant, but the suspension was upheld. (Exhibit 1, Tab 22)

Psychological Reports

The two psychological reports submitted as evidence by the board for the period between the two IPRCs (D. M. Johnson, M.D., F.R.C.P. (C) PSYCH - Exhibit 1, Tab 22, and D. Bartholomew, an employee of the Lake Board for assessment - Exhibit 1, Tab 16) indicate significant issues in the area of behaviour and specify that interaction with peers presented difficulties for the child. Both reports identify a need for social skill training.

Testimony of Rick Windsor

Rick Windsor, an educational coordinator with a focus on literacy and special education, was sworn as the second witness for the Board. Mr. Windsor was involved with the child at Sir John A. Macdonald School from 1993 to 1996, and was responsible for overseeing appropriate programming for the child. He described the child as a "... very high needs student both academically. socially, behaviourally...", "needing... constant monitoring...for social and emotional support."~ (Transcript Feb. 3, 1997 p. 8). Mr. Windsor testified that a large component of the educational plan for the child involved trying to build some social, emotional, and behavioural skills which would help the child to achieve success. In Mr. Windsor's opinion, the child's success in achieving academic success was much hindered by the child's way of dealing with behavioural and emotional problems. Mr. Windsor's testimony supported the findings of the psychological reports, when he testified that the child "had a great deal of difficulty in group type situations. The child was fine on a one to one basis. The child used to come and see me for the most part, but the child had a great deal of difficulty in group type situations, both with the child's peers and with adults. The child had problems maintaining inter-personal relationships without alienating on an

on-going basis” (Transcript Feb. 3, 1999 p. 11)

When asked the question, “Based on your experience of having dealt with the child and having read the definition of behavioural, can you give us an opinion of whether or not you believe the child would fall within that exceptionality?” Mr. Windsor replied, “I believe that the behavioural exceptionality in the end overrode the communication disability. I believe it was the primary concern.” (Transcript Feb 3, 1999 p. 11)

The Tribunal convened for the third session on May 17, 1999. Ms. Jennifer Scott was introduced as the Counsel for The appellant and The child Tucker.

Ms. Scott indicated that the appellant had modified her demands. Concerning “Identification” Ms.. M was reported to be ready to accept Learning Disabled (L.D.) and Behavioural provided that the coding on the child’s records showed L.D. to be the primary disability i.e. (04/0 1). (Transcript May 17-19, 1999 p. 3) Ms. Scott reported that the appellant was no longer seeking to return the child to an elementary school setting. The main area of dispute thus became the child’s placement.

The Tribunal expressed its concern that the child who would be 16 in August 1999 was a young man in need of consistent, carefully planned program. The placement which had been partially agreed upon was a positive start, however, the challenge remained for the two parties to work out the remaining placement issues. The Tribunal agreed to recess to permit the two parties to meet and to negotiate a mutually satisfactory solution.

On re-convening Ms. Scott reported that the appellant, “is prepared now to have an order by this Tribunal confirming both identification and placement and once that order is provided by the Tribunal then as far as the appellant is concerned the proceeding is at an end.” (Transcript May 17-19, 1999 p. 3)

The Tribunal recessed the hearing and prepared the order which follows. The Order is the result of the cooperation of the appellant, the Board and the Counsel for both the Appellant and the Respondent.

Tribunal Decision and Order

Recognizing that the Lakehead Board of Education and Ms/ M.agree on the identification and placement of the child this Tribunal orders that:

1. The Identification of the child be learning disabled/behavioural. (04/01)
2. The Placement of the child be in a secondary school with appropriate support.
3. An IEP be developed forthwith which includes two hours of remedial one to one teaching daily to address The child's learning disabilities.

The Tribunal recognizes that we cannot bind future IEP's, however, we strongly recommend that this support be continued throughout the child's secondary school education.

May 19, 1999

Costs The Tribunal makes no order as to costs

Wayne Tompkins, Chair

Marilyn Thain

James Clemens

August 5, 1999