



ONTARIO SPECIAL EDUCATION (ENGLISH) TRIBUNAL

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 1983

BETWEEN

J F, Appellant

-and-

Near North District School Board, Respondent

Tribunal Members:

| | |
|---------------|--------|
| Marilyn Thain | Chair |
| Derryn Gill | Member |
| Jim McCaughey | Member |

Appearances:

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|-----------------|---|
| Bob Clements | Representative for the parent |
| Dr. Dusty Papke | Representative for the Near North District School Board |
| Louise Sibbald | Secretary |

The preliminary hearing on the matter of jurisdiction was held by teleconference on August 1, 2007.

INTRODUCTION

The appellant appealed to the Ontario Special Education (English) Tribunal, (the Tribunal) on May 21, 2007 regarding the special education placement of her child, an exceptional pupil.

The child is a student identified with a Communication – Learning Disability, was thirteen years old and in Grade 8 in a Regular Class in the Near North District School Board (NNDSB) at the time of the appeal to the Tribunal.

An initial teleconference was held with the parties on June 18, 2007, followed by another teleconference on June 28, 2007. At that time a hearing on the matter of jurisdiction was scheduled for August 1, 2007. The parties agreed to pursue mediation in an attempt to resolve the situation in the child's best interests.

RELEVANT STATUTORY PROVISIONS

The Tribunal's authority is set out in section 57 of the *Education Act, R.S.O. 1990, c. E.2*, and the regulations made there under. The Tribunal's procedures are governed by the *Statutory Powers Procedure Act, R.S.O. 1990, c. S 22*, the Tribunal's *Rules of Procedure*, and the general rules of "natural justice" and "procedural fairness" applicable to administrative tribunals.

Education Act, R.S.O. 1990, c. E.2

Subsection 57 (3) Right of appeal: Where a parent or guardian of a pupil has exhausted all rights of appeal under the regulations in respect of the identification or placement of the pupil as an exceptional pupil and is dissatisfied with the decision in respect of the identification or placement, the parent or guardian may appeal to a Special Education Tribunal for a hearing in respect of the identification or placement.

Subsection 57 (4) Hearing of Special Education Tribunal: The Special Education Tribunal shall hear the appeal and 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.

Regulation 181/98

Regulation 181/98: Identification and Placement of Exceptional Pupils governs the identification and placement of exceptional pupils; Identification, Placement and Review Committee (IPRC) reviews; appeal procedures; and the role of parents/guardians in these proceedings. This *Regulation* provides a mechanism for parents to appeal identification and placement decisions of an IPRC to a

Special Education Appeal Board (SEAB) and sets out the time lines that must be met for such an appeal.

Subsection 9 (1): In accordance with requirements under the *Education Act*, no pupil is to be denied an education program pending a meeting or decision under this Regulation.

Subsection 21(1): The principal of the school at which a pupil's special education program is being provided,

- (a) may on written notice to a parent of the pupil;
- (b) shall at the written request of a parent of the pupil; and
- (c) shall, at the written request of the designated representative of the board that is providing the special education program to the pupil,

refer the pupil to a committee established by the board that is providing the special education program to the pupil for a review of the identification or placement of the pupil.

Subsection 21(3): Subject to subsection (4), the designated representative shall make a request under clause (1) (c) when in his or her opinion it is necessary to do so in order to ensure that a review in respect of the pupil is held under this Part at least once in each school year.

Subsection 26(1): A parent of a pupil may, by filing a notice of appeal in accordance with subsection (2) or (3), require a hearing by a special education appeal board in respect of,

- (a) a committee decision under Part 1V or V that the pupil is an exceptional pupil;
- (b) a committee decision under Part 1V or V that the pupil is not an exceptional pupil; or
- (c) a committee decision under Part 1V or V on placement of the pupil

Subsection 26 (2): A notice of appeal in respect of a committee decision under Part IV shall be filed with the secretary of the board,

- (a) if no meeting is held under section 19, within 30 days of receipt of the statement of decision under section 18 by the parent who is seeking to appeal; or
- (b) if a meeting is held under section 19, within 15 days of receipt of the notice under subsection 19(4) by the parent who is seeking to appeal.

Subsection 26 (3): A notice of appeal in respect of a committee decision under Part V shall be filed with the secretary of the board,

- (a) if no meeting is held under section 24, within 30 days of receipt of the confirmation under subsection 23 (3) or the statement of decision under subsection 23 (4) by the parent who is seeking to appeal; or
- (b) if a meeting is held under section 24 within 15 days of receipt of the notice under subsection 24 (3) by the parent who is seeking to appeal.

ISSUE

The NNDSB raised the question of the Tribunal's jurisdiction to hear this appeal. The issue for determination at this stage is whether, as a threshold matter, the appellant has exhausted all rights of appeal under the regulations, as required by s. 57(3) of the Education Act.

POSITIONS OF PARTIES

Dr. Papke, representative for the NNDSB, stated that the Tribunal should not take jurisdiction of this appeal. He stated that no IPRC meeting has taken place. He said that the NNDSB feels the matter is now moot because there is a settlement agreement. The NNDSB wishes to move forward and implement the settlement agreement.

The appellant contended that the IPRC meeting was convened on March 27, 2007 as scheduled. Mr. Clements, representative for the appellant, said that the parent has exhausted all her rights as in her opinion with regard to the IPRC and the SEAB, "no decision is an adverse decision". He said that the Tribunal has jurisdiction to hear the appeal.

The Tribunal heard submissions from the representatives of the parties. These submissions provided helpful factual background. The parties did not disagree on those dates and facts summarized below.

SUMMARY OF SUBMISSIONS

- The child's previous IPRC took place on May 30, 2006 at which time the identification was Communication – Learning Disability and the placement was Regular Class with Resource Assistance.

Case Conference

- On February 19, 2007 a case conference was held at Land of Lakes Senior Public School to discuss the child's Individual Education Plan (IEP). The

principal of special education, the coordinator, the teacher, the mother and her friend were in attendance. The mother was notified about the IPRC scheduled for March 2, 2007.

IPRC Meeting

- The mother was unable to attend the March 2, 2007 IPRC meeting because of inclement weather.
- On March 2, 2007 the school, in response to mother's request, faxed a draft copy of the IPRC decision and an updated IEP to the mother, along with the case conference notes as recorded by the principal of special education. The word "draft" was written across the top of the IPRC decision. The IPRC meeting was rescheduled for Tuesday, March 27, 2007.
- On March 8, 2007 the principal sent an email to the appellant asking her if rescheduling the IPRC to March 27, 2007 was convenient for her. A letter was prepared to notify the mother of the rescheduled date of the IPRC meeting. The child was not in school on March 8, 2007, so the letter was sent home with the child on the child's return on March 19, 2007, after the March Break.
- On March 22, 2007 the school principal sent an email to the parent to confirm her attendance and notification of the IPRC meeting. He had been unable to reach her by phone.
- On March 22, 2007 Mr. Clements notified the school that the parent would not be attending the IPRC meeting, and he requested a copy of the IPRC decision. The school principal emailed Mr. Clements the same copy of the IPRC decision that had been shared with the parent on March 2, 2007. This was still considered a draft copy. It had not been signed by anyone at the school and it was not dated. The date read "To Be Determined".
- On March 22, 2007 the school principal sent an e-mail to Mr. Clements. He asked Mr. Clements if he would be attending the IPRC scheduled for March 27, 2007 and indicated that if Mr. Clements would not be attending, then he would schedule someone else for that meeting.
- On March 22, 2007 Mr. Clements notified the school principal that he would not be attending the IPRC planned for March 27, 2007.
- On March 27, 2007 Mr. Clements sent an email to the school principal questioning the placement decision. He noted with concern that a change in placement had been effected without an IPRC meeting.

- On April 2, 2007 Mr. Clements sent an email to the school principal indicating “a formal Review IPRC can commence” along with a number of questions and concerns about Nigel’s program.

Special Education Appeal Board

- On April 12, 2007 the NNDSB received a notice from the parent requesting a SEAB for the placement of her child.
- On April 26, 2007 the NNDSB received a letter from the parent naming her representative to the SEAB.
- On or about May 15, 2007 the superintendent contacted Mr. Clements and indicated that he wanted to go ahead with the IPRC.
- On or about May 22, 2007 Mr. Clements told the superintendent that the parents were proceeding to file an appeal with the Tribunal.
- No Special Education Appeal Board was held.

Settlement Agreement

- The parties worked with a mediator and have reached a settlement agreement.
- Mr. Clements acknowledged to the director of education in writing that the parents are in agreement but they would prefer that the Tribunal assume jurisdiction. He said that the parents are waiting for the decision of the Tribunal before they decide whether to sign the agreement.
- The director of education has signed the settlement agreement.
- The NNDSB wishes to move forward and implement the settlement agreement.

REASONS

The Tribunal’s authority is set out in section 57 of the *Education Act*. To assume jurisdiction, the Tribunal must be satisfied that the parents have fully exhausted their rights of appeal of their child’s exceptionality identification or special education placement or both, and that they are dissatisfied with the identification or placement decision, or both.

The parties disputed whether or not an IPRC had taken place. The submissions showed that neither the appellant nor her representative was able to attend the

IPRC scheduled for March 27, 2007. The NNDSB notified Mr. Clements that if he did not attend the IPRC meeting on March 27 that the scheduled time would be given to someone else. The child's IPRC meeting did not take place that day. No IPRC decision had been made and this continues to be the case despite the ongoing discussions and mediated settlement. Since the previous IPRC meeting took place on May 30, 2006 and the school board has one year within which to conduct the IPRC review, postponing the March 27, 2007 meeting did not unduly delay the process.

A decision that has not been completed and has not been reviewed by the IPRC does not constitute an IPRC meeting. Therefore, the Tribunal finds that there was no IPRC meeting held as required under ss. 21 (1) *Regulation 181/98*.

The SEAB was not convened as there was no IPRC decision to appeal. Parties are required to go to the SEAB before appealing to the Tribunal. This is a statutory precondition to the Tribunal's jurisdiction.

Therefore the Tribunal finds that the rights of appeal have not been exhausted by the appellant.

DECISION

The Tribunal finds that it does not have jurisdiction to hear the appeal. The appellant has not exhausted all rights of appeal as required by s. 57(3) of the *Education Act*. The appeal is dismissed.

COMMENTARY

The Tribunal congratulates the parties for coming to a mediated settlement and wishes them well in the implementation of the agreement. The Tribunal urges both parties to ensure that decisions made concerning the child follow the procedures set out in the legislation and regulation, and to ensure that those decisions are in the child's best interests.

Marilyn Thain, Chair _____

Derryn Gill, Member _____

Jim McCaughey, Member _____

Dated August 15, 2007