



ONTARIO SPECIAL EDUCATION (ENGLISH) TRIBUNAL File #13

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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 in 1979;

BETWEEN

L. and L.

Appellants

- and -

THE BOARD OF EDUCATION FOR THE CITY OF WINDSOR

Respondent

Tribunal Members:

Tom H. Houghton  
Anne Keeton Wilson  
Kenneth J. Weber

Chairman  
Member  
Member

For the Appellants:

Jeff Kehoe, Law Student  
L.

For the Respondent:

Brian P. Nolan, M.A., L.L.B.

The hearing was held in Windsor on June 22, 23 and 24, 1988.

## **Introduction**

The appellants had originally applied to the Ontario Special Education (English) Tribunal (hereinafter called the "Tribunal") under subsection 36(1) of the *Education Act* (the "Act") for leave to appeal to a regional tribunal in respect of the identification by The Board of Education for the City of Windsor (the "Windsor Board") of their child, as an exceptional pupil. Subsequently, both parties agreed, under subsection 36(3) of the Act, to request the Tribunal, in lieu of granting leave to appeal, to hear and dispose of the appeal.

## **The Appellants' Request**

Mr. Kehoe, who represented the parents during the first day of the hearing, states in his grounds for appeal that the identification of the student by the Identification, Placement and Review Committee (the "IPRC") as 'Multiple Area: Intellectual (Trainable Retarded) - Communication (Autism)' is not appropriate, and requests the Tribunal to identify the student's exceptionality as 'Communication (Autism)'. He further requests that the Windsor Board be directed to "enter into negotiations with the appellants to discuss possible future options for the student in terms of needs, placement and programs".

It should be noted here that at the beginning of the second day of the hearing Mr. Kehoe withdrew from the case, at which time Mrs. L. undertook to represent her husband and herself for the remainder of the hearing.

## **The Respondent's Reply**

Mr. Nolan, on behalf of the Windsor Board, contends that the Windsor Board has fully complied with all the requirements of provincial legislation, and based on all the assessments and evaluations of the student, has correctly identified the student as having multiple exceptionalities that include both autism and moderate to severe mental retardation. He requests that the appeal be dismissed.

## **The Appellants' Presentation**

### **L., the mother**

The appellant testifies that her child appeared normal and healthy from birth until approximately 18 months when it was noted that the child was not talking or relating or communicating like others of similar age. From that point to the present day, the witness describes the child as a child who exhibited and continues to exhibit a variety of distinctive behaviours.

"The child would run outside and run away and we would call the child back and the child would not come back." "The child did not seem to realize [the child] had a home to go back to and we would have to run after the child and get the child." "The child just didn't seem to care. The child didn't seem to notice that there were other children or people around [the child]."

The appellant says that the child “would pick up grass or dirt and put it in [the child’s] mouth and eat it long after most children stop that”. Nor did the child respond to repeated corrective measures or punishment. Rather, the child would “laugh at us when we did that sometimes. The child would just keep doing the same thing over and over again.”

Further, the child was hyperactive. “The child would not sit still for more than two seconds. The child would be up and running around the room, pulling things off shelves...”

The appellant explains that she gradually came to understand these behaviours as typical of autism, although she indicates that the medical professionals to whom she took the child, seemed uncertain, confused, and contradictory in their diagnoses. When the child was two and a half years old, the family doctor advised that “the child will talk when the child is ready; there is nothing wrong with the child”. The witness describes a visit to an ear, nose and throat specialist at two years ten months, who diagnosed hearing impairment; and a hearing test by an audiologist a month later which found nothing wrong with the child’s hearing.

At about the same time, the child saw a speech pathologist who was “unable to do anything with the child”.

In March 1983, the child saw a psychiatrist and in June 1983, a psychologist and a neurologist. According to the appellant, these doctors could not determine what was wrong with her child, although the ear, nose and throat specialist (who diagnosed hearing impairment) mentioned that the child “might be one of these autistic children. Those were his words.”

About a year later (July 1984) at the prompting of the director of the Shirley E. Taylor Preschool, the appellant testifies that she took the child to Children’s Psychiatric Research Institute in London, where under Doctor G. G. Hinton, a pediatric neurologist, the child underwent a battery of tests in July and September. The appellant states that the results again were inconclusive although Dr. Hinton thought that the child was autistic.

In cross-examination, the appellant acknowledges that in his tests, Dr. Hinton “was investigating the possibility of organic disorder”. She also explains that the various tests of the child were difficult to carry out and as well, acknowledges that several of the medical professionals, described earlier, indicated that the child might have a cognitive disorder. Further, the report of Dr. L. R. Piggott, a psychiatrist, in March 1983, included an assessment of mental retardation. In response to further questioning from Mr. Nolan, the witness agrees that the child was assessed at the Windsor Western Hospital Regional Children’s Centre (the “Regional Children’s Centre”) where the evaluations concluded that the child is both autistic and mentally retarded. The appellant agrees that the child’s situation is not one in which some selective studies show the child is autistic whereas others show the child is retarded. She further agrees that the child today continues to “exhibit the same behaviour patterns” and “still has trouble appreciating instructions and functioning intellectually” and that the child functions “in the mentally retarded range”.

With respect to the identification of the child by the Windsor Board, the appellant disagrees with “the multiple exceptionality that the [Windsor] Board uses because it seems to me that the trainable retarded part of that exceptionality, that half of it, takes complete precedence over autism. It seems that the Board has given the child an autism and trainable retarded identification and then has totally forgotten about the autism.”

The witness states, also in cross-examination, that she is “uncomfortable with the term ‘trainable retarded’. First of all, I don’t think the child is ‘trainable’. I think the child is more severe than that.” “...it does not give a true picture of what the child is like.”

The appellant contends that it is crucial for the child to be identified autistic since the identification will imply the type of program the child receives. She states, “...if the child doesn’t get that identification [the child’s] communication and socialization problems just seem to get virtually ignored. The child is not the same as a trainable retarded child...The child’s needs are more severe than a trainable retarded child or even a developmentally handicapped child in some areas. The child has such a diverse array in [the child’s] skills.”

The appellant testifies that she has kept a close contact with the child’s placements. The child attended the Shirley E. Taylor Preschool for the mentally retarded, from age three-and-a-half to age five-and-a-half. After this the child attended the Southwood Public school in the Windsor Board’s system.

After the appellant became associated with the Ontario Society for Autistic Citizens (“OSAC”) in 1984, the child began to attend the seven-week summer program run by OSAC. The child attended in 1985, 1986, and 1987, and will attend again in 1988. In this program, which the appellant condones, there is emphasis on sign language, toileting, and much physical activity such as swimming. The appellant claims that the OSAC summer program is specifically geared to the needs of autistic children.

In cross-examination, the appellant states that she visited the child’s current program (at Southwood) several times, and acknowledges that the program there coincides “to a certain point” with the recommendations of the Regional Children’s Centre. Whereas counsel for the Windsor Board contends that there is a heavy emphasis on communication in this program, the appellant maintains that the emphasis is moderate. She acknowledges that the program includes life skills such as toileting and dressing, and that it was reviewed with her in total by the Windsor Board, and that she agreed with the child’s placement in both 1985 and 1986.

The appellant agrees that the child’s present program is a good one but she feels that “the child needs expertise in autism. I want the best for the child. I do not want second best...I want teachers who are specially trained who do nothing but work with autistic children. I want everybody in that room with the child to be up on the latest advances that work with these kids.”

## **John Strang**

Doctor Strang, Co-ordinator of Neurodevelopmental Services at the Regional Children's Centre, and administrator of an outpatient service for autistic children, explains that his first contact with the child was through Dr. Hinton's report, then in turn through a visit in April-May 1985, at the Regional Children's Centre. He has had fairly regular contact with the child's case since then. Dr. Strang testifies that autistic children are "one of the most exceptional groups of kids who we would deal with in our setting which is a children's mental health setting". By 'most exceptional', Dr. Strang says he refers to service requirements, intensity of treatment concerns, and amount of co-ordination necessary among family, school, and other services.

In response to questioning whether an autistic child would function at a lower cognitive level, Dr. Strang replies, "I don't think that is necessarily true," and, "I guess in general your point is true though... it is a kind of yes or no on that one." He later states that according to the general literature, close to 75 per cent of autistic children function at the mentally retarded level, and that 90 per cent of the children he deals with are mentally retarded. Dr. Strang explains that the identification of mental retardation is derived from intelligence quotient (IQ) test scores below 70 and acknowledges that when a subject cannot or does not respond on a test, the score will naturally be low. The witness states, however, that "for kids who happen to be very low cognitively and also have severe autistic behaviours we would not expect that if we could cure those severe autistic behaviours or modify them...that they would no longer be retarded".

The witness claims that "if in fact the children are mentally retarded...and have autistic symptomatology as well, the best thing to do is to dually diagnose them". He also offers that when treating a child who is both mentally retarded and autistic, it is "critical that you understand they are autistic. It is also important you understand they are mentally retarded because the autism syndrome...is so rare...and maybe for that reason it is the more important thing."

Dr. Strang testifies that major differences in treating an autistic child who is mentally retarded and one who is not, include intensity of treatment and recognizing proper prognosis. In response to questioning he says that "a label of mental retardation... tells us something very general about people" and that an autistic label refers to a more specific "cluster of symptoms". The witness also agrees that communication should be the focus of a program and that this is the focus of the program with the child at the Regional Children's Centre.

In cross-examination, Dr. Strang testifies that for children scoring below the first percentile in all measures, "my conclusion would be that they are mentally retarded as well as autistic if they happen to have the autistic behaviour". He states further that in his view, the child is mentally retarded as well as autistic and that the Regional Children's Centre has identified the child in this way.

Also in cross-examination, Dr. Strang is referred to a June 1983 report of the Regional Children's Centre by Dr. G. A. Fellbaum which states that the child was functioning in the moderate to severe range of mental deficiency; to an April-May 1985 report of the Regional Children's Centre which includes a diagnosis of autism, hyperkinesia and moderate to severe mental retardation; to a July 1985 report from the Regional Children's Centre by Doctor L. R. Piggott which reports the same; and also to a June-August 1987 assessment by the Regional Children's Centre which indicates there was no change from previous assessments. Dr. Strang agrees with all the findings in these reports. He also indicates that the child has been given a score of 45.5 on the Childhood Autism Rating Scale (CARS) at the Regional Children's Centre.

The witness states that in the Windsor Board's "own terms" its identification of the child is proper. He agrees that children who are moderately to severely retarded should be placed in classrooms where there is a lower pupil/teacher ratio and acknowledges that the child is presently placed in such a class. Dr. Strang says there is good communication between the Regional Children's Centre and the Windsor Board in regard to the child's situation.

### **Marcia Gragg**

Dr. Gragg, a registered psychologist, states that her duties at the Regional Children's Centre include the role of clinical supervisor for the autism resource program. She has been involved with the child since September 1986, in assessments, home and school visits, and supervising and training staff who deal with the child directly.

Dr. Gragg testifies that, in her opinion, the child is autistic.

In cross-examination, the witness agrees that the child is "functionally at the moderate to severe range of mental retardation both cognitively and in the child's adaptive behaviour". She also testifies that to the best of her knowledge, between 70 and 80 per cent of autistic children are also retarded.

According to Dr. Gragg, labelling a child autistic would be advantageous if it led to appropriate programming. She holds that the best focus for any treatment of the child would be on communication, although she acknowledges, in cross-examination, that communication is not the child's only need. Dr. Gragg further testifies that a recommendation of the Regional Children's Centre is that the child would need specialized programming in school and other environments, and to the best of her knowledge, that is what the Windsor Board is providing.

In response to questions from the Tribunal, Dr. Gragg explains that she prepares a program for the child, in consultation with a speech and language pathologist and the child's case manager at the Regional Children's Centre. The program is implemented in the home. The witness states that a copy of the program was requested by Mrs. Sylvia Gesuale, the child's teacher, and she assumes that some of the features of the program may be being implemented in the child's classroom.

## **Bruce Awad**

Mr. Awad is an Ontario certificated teacher employed by the Windsor Board, and he holds a Specialist certificate in Special Education. He has been involved with OSAC since 1980, and for four years has been President of the Windsor-Essex Chapter of OSAC. Mr. Awad is the father of an autistic child, and contends that he has “had to make it my business to become knowledgeable and become an expert so to speak, in identifying...finding the correct placements and being able to decipher all the terms and different jargon and terminology.”

The witness is acquainted with the child through the summer school program in which the child is enrolled. Mr. Awad has been the director of the program for the past four years. He has also designed and co-ordinated the week-end parent-relief program for autistic citizens in which the appellants have taken part. Mr. Awad states from his knowledge of autism and of the child, that “it is very clear in my mind that the child is an autistic child”.

Mr. Awad asserts that irrespective of what other exceptionalities may be part of a child who is autistic, “I believe that autism under ‘Communication Exceptionality’ should be the main predominant identification” and that the child “should be identified as communication-autistic”.

Mr. Awad says that he recognizes that autism and mental retardation frequently coexist but he believes it is important to differentiate between the two because of the potential effect on placement and program.

Mr. Awad contends that “autism is clearly a distortion of all areas of development in a child whereas mental retardation is a delay”. When the two exceptionalities coexist, “autism must be considered the prime exceptionality”. He asserts that a mentally retarded child will be more sociable and be able to communicate more than an autistic child.

In re-examination, Mr. Awad emphasizes that a proper school program for a child identified as autistic, must focus on communication, behaviour, and socialization. In examining the report of the Windsor Board’s November 1986 IPRC review of the child, Mr. Awad contends that “socialization has not been dealt with”. He claims the same is true for the November 1987 IPRC report.

## **Jane McLean**

Miss McLean, the Executive Director of OSAC, contends that because autism is a “very severe, lifelong pervasive developmental disorder...” with deficits in socialization or social relatedness, communication and behaviour, it is necessary to have a proper and definitive identification and diagnosis of the syndrome.

The witness testifies that there are differences between autism and mental retardation, particularly in social and communication deficits, with the former exceptionality being more severe. Further, she states that an autistic child will have an uneven developmental and skills profile whereas with mental retardation the profile is more even. Miss McLean indicates that

the unevenness in developmental ability in the autism evaluation report of the child (Exhibit 1) is typical of autistic children.

In being asked to read from and interpret an excerpt in the “Handbook of Autism and Pervasive Developmental Disorders” (Exhibit 6), Miss McLean says she believes that text “is stating that while there are often coexisting autism and mental retardation, the identification of the autism is mandatory to make sure the appropriate services and placement can occur”. She states that the identification ‘communication-autism’ is best for autistic children given the other definitions currently used by the Ontario Ministry of Education. [The witness adds that OSAC feels the Ministry’s definition of autism “is very loose and in fact, does not follow current diagnostic criteria”.] Miss McLean contends that identification is important “because once that identification is given, programs and treatments flow from that identification”.

In response to questioning, Miss McLean claims that school boards in Ontario vary in their flexibility and use of the current Ministry definitions. She also states that one of the most important factors in any placement is the skills and training of the staff, but that “We have found in many cases that staff that are trained to deal with children and adults with mental retardation are not trained and cannot work effectively with children with autism...”.

In cross-examination, Miss McLean acknowledges that from reading the reports, an identification of the child as being autistic and mentally retarded is correct. She also acknowledges that the Windsor Board, to the best of her knowledge, is acting within provincial legislation.

## **The Respondent’s Presentation**

### **Mary Konstantareas**

Dr. Konstantareas is Head of the Autism Clinic and of Research at the Child and Family Studies Centre at the Clarke Institute of Psychiatry, Toronto. She is also appointed to faculties at both the University of Toronto and York University.

On the basis of the written reports from the Regional Children’s Centre, Dr. Konstantareas describes the child as being pervasively developmentally dysfunctional. In her view, autism is a core category of “pervasive developmental deviation. So, by definition, the child is multiply handicapped.” While the child does not have a physical handicap, the child has exceptionalities in cognitive and social ability, in communication, self-help skills and living skills, and is therefore clearly multiply exceptional. Further, in Dr. Konstantareas’ opinion, the child functions in the lower one-fourth of the population of autistic children “in both the cognitive spectrum but also in terms of [the child’s] adaptive functioning”. The witness therefore has “no doubts” that the child is both severely mentally retarded and severely autistic.

Under cross-examination from the appellants, Dr. Konstantareas states that, of the two conditions of mental retardation and autism, she is unable to judge which condition is the

more severe. In a multiply-handicapped child, the relative ingredients of each condition might vary. In the child's case, the child's multiple exceptionalities would make the child more taxing and challenging to everybody and the child would require more than a child at a similar level of mental retardation without autism. That is not to imply, however, that autism is a more severe condition than mental retardation. Dr. Konstantareas also disagrees that identifying a child as autistic, as opposed to multiply handicapped, would imply that the child requires a teacher with a different or specialized training. In her view, the same qualifications and techniques are needed for teaching both mentally retarded and autistic children. What is needed by the teacher of an autistic child, however, is a special awareness so that the teacher might be more tolerant and persist longer with such a child. "I do not think that you need special training in autism; you need awareness or education about autism. But the same special ed. teacher who has been trained as a special ed. instructor could do very well with autistic children as well as mentally retarded children. She has to be merely aware of the special characteristics of the autistic population and be more tolerant and more positive than the other teacher because otherwise you may lose the child in three months." Dr. Konstantareas testifies also that, in the case of autism, the teacher would need to know how to deal with self-stimulatory behaviours, so that these will not interfere with programming.

Dr. Konstantareas judges the program plan designed for the child to be adequate and, while not ideal, sufficient and satisfactory for meeting the child's needs. She says, "I noticed considerable correspondance with the mother so that there was an attempt to co-ordinate the efforts of the home and school. I felt that the teacher was very caring. I also want to add that I was impressed by the very supportive and conciliatory attitude of the reports; I liked the way they were phrased. I liked the way that the child was being presented as energetic as opposed to impossible to handle, as pleasant, as someone who has character. So I felt that overall the program meant well - I mean the [Windsor] Board was meaning very well and was really catering to the needs of the child." She further states that if she were to write a program for the child, many of the elements of the school's program would be included. She admits however that she has no knowledge of how well the program is being implemented.

Dr. Konstantareas is impressed by the scope of the program. She states, "What I think impressed me positively with this program was the attempt to really deal with the child at the child's level; that is, the system of communication that was instigated was appropriate, I felt, to the child's level of functioning and the child's ability to process input."

Under cross-examination, when asked to evaluate the priority given to communication training in the program plan, Dr. Konstantareas says that she cannot draw inferences about the teaching priorities, but there is clearly an element of communication throughout. When asked whether there seemed to be a particular emphasis on communication in the written reports, Dr. Konstantareas replies, "I would like to go back and say something for all of us. That is, if the child is incontinent, pays no attention, has very poor eye contact, as a teacher, no matter what the designation of the child, you are going to give priority to the areas that interfere with interaction or rapport the most. Now, the fact that different areas are being written under different headings and some headings appear earlier than later, may not reflect what in fact was the priority."

Dr. Konstantareas also notes that socialization cannot be viewed as a separate component but is implied throughout the program. When asked to comment on the integration of autistic with mentally retarded pupils, she states, "I would say that there is no evidence...that an autistic child will be compromised if he or she were to be grouped together with a mentally retarded child. By contrast, my personal experience is that if you have a Down syndrome mentally retarded child and an autistic child together, the tendency of the Down child to be more outreaching and socializing might, in fact, have a salutary effect on the autistic child's behaviour, but that is not guaranteed."

### **Zoltan B. Veres**

Mr. Veres is Superintendent of Special Services and Special Education for the Windsor Board. He indicates that the child and similar pupils are designated "multiple area exceptionality" to indicate a combination of intellectual handicap (mental retardation) and communication handicap (autism). In discussing with the appellants the designation of the child, Mr. Veres states that the identification of the child as solely communication-autism, without the addition of the designation of intellectual retardation, "would not create any problems for us in terms of our Board's Bill 82 plan". Mr. Veres also states that designating the child as autistic would not have made a difference to the child's placement. Although the Windsor Board has in the past purchased service for a pupil in a class for autistic pupils offered by The Windsor Roman Catholic Separate School Board, Mr. Veres notes that the child differs from this pupil by having a severe intellectual handicap in addition to autism. Mr. Veres testifies that the designation of a handicap does not imply a specific placement, but that an IPRC would take into consideration information about the child from various sources in coming to a recommendation for placement.

In considering whether the child's needs could be better met in a program with pupils designated both autistic and trainable retarded, rather than in a class in which the only handicap common to all the pupils is mental retardation, Mr. Veres states that he believes the child's needs are being met in the child's current program.

### **Chuck Smith**

Mr. Smith, Co-ordinator of Special Education Services for the Windsor Board, states that one cannot generalize about the placement of pupils who are designated as both autistic and mentally retarded. Rather, one would have to look at the individual programs developed for each pupil within the placement, and at the support staff and services provided. Asked why the school board has not established a class for pupils with both designations, since there are at least five in the system, Mr. Smith replies that the designation of these pupils is only one of the factors considered by the IPRC. These pupils also differ in age.

## **John Jerry Berek**

Dr. Berek, Head of Psychological Services for the Windsor Board, states that he has only indirect knowledge of the child's class and of the staff at Southwood School. He has visited the class for a half-day to observe the child. Dr. Berek believes that a child who is both autistic and trainable mentally retarded should be placed in a class where his or her special needs are met, regardless of the designation of the class.

## **Sylvia Gesuale**

Mrs. Gesuale has been the child's teacher since September 1985. She has taught severely and profoundly multi-handicapped pupils for 14 years with the Windsor Board.

Mrs. Gesuale describes the child as probably the most active child with whom she has worked. At the time of admission to her classroom, the child was not toilet trained, and would frequently run from the classroom and out of the school grounds. The child was unaware of danger and required one-to-one supervision in activities outside the school. The child is non-verbal, has a compulsive tendency to eat non-edibles, and is hyperactive, requiring frequent individual supervision.

The individual program plan for the child, dated April 7 and 8, 1987, focuses on toileting and eating. Records of a preliminary review conference dated November 1986 include a recommendation from the special education consultant that the child's program should focus on a purposeful system of communication. Mrs. Gesuale states that communication "is always our focus...with all our children it had to be communication because they had none, no consistent means of it...It may not be in written form but with my approach to teaching, I have to have communication with a child in order to work with them."

A conference report dated June 30, 1987 quotes Mrs. Gesuale as stating that the child might benefit from a program in which autism is the focus. In response to questioning Mrs. Gesuale states that she made this remark since she was aware of the child's need for a focus on communication skills. Although Mrs. Gesuale made the remarks at the June 30, 1987 conference, she believes that the child is benefiting from the child's present program, and the child's skills in communication are increasing. In her view the child's current program meets the child's needs. In cross-examination, Mrs. Gesuale describes the emphasis which the child's program places on communication. She states, "When I say communication, I am looking at the child being able to function in whatever setting they are in, being able to express how they are feeling, what they want...We don't just pick out a time of day and do communication; it's an ongoing thing, although there is a time of day where (the child) works on specific areas within communication such as identifying or pointing to pictures to get something. Through the day, it is being able to function with the group, on the child's own, with the staff, just being comfortable...We use signing, we use pointing, we use gesturing, we use pantomime, anything that the child can give or understand, or interpret." Asked if she has seen progress in the child, she replies, "Certainly."

In response to questioning, Mrs. Gesuale comments upon the lack of reference to socialization in the written reports concerning the child's program. She states that once again socialization training occurs throughout the learning activities. She gives as an example the weekly swimming lessons, where children must learn life skills, follow routines, and achieve the skill of swimming, a skill in which they will be able to participate with their families. Mrs. Gesuale notes that learning to follow commands and directions, and to behave in socially accepted ways are basic goals for her pupils.

Mrs. Gesuale believes that mixed grouping is beneficial for pupils like the child. "I support a mix of children in the classroom... I think that when you have non-verbal children, they need to hear children speaking." Asked if a class with some children who speak would be an improvement for the child, Mrs. Gesuale replies, "Yes, but none of ours do right now."

Mrs. Gesuale has taken workshops and attended lectures on autism. She has learned basic sign language through courses arranged by the Windsor Board. She uses sign language in her teaching with the child. Asked if she might benefit from visiting other classes of autistic pupils, Mrs. Gesuale replies, "It certainly wouldn't hurt, but I do believe I have a good background of experience myself."

In reply to a question about her contact with the appellants, Mrs. Gesuale states that she communicates daily with parents through a communications book. She frequently telephones parents, including the appellants. She also designs programs for her pupils in conjunction with the Windsor Board's psychologists, speech and language pathologists, and in the child's case, she co-ordinates the program with that of the Regional Children's Centre.

There are four adults who work in the child's class of seven pupils. As well, there are scheduled weekly visits from the school board psychologist, the program consultant and the program co-ordinator and from the speech and language pathologists. The occupational therapist and physiotherapist set up programs for pupils, which the teaching staff monitor.

Mrs. Gesuale describes the records which she keeps of her pupils. In addition to daily observations, she keeps notes which are used for annual program reviews. She is also assessing children individually on the Volpe Assessment Battery. Each child has a program book which includes individual program plans, charts and health information and a profile of the child. It can be used by any teacher or worker and is useful if the teacher is absent.

Mrs. Gesuale states that the child has a tremendous amount of potential, and that the teaching staff enjoy working with the child.

### **Teresita Luna**

Ms. Luna is a developmental service worker employed by the Windsor Board. She works, under the supervision of Mrs. Gesuale, with the pupils in the child's classroom. She has a specific responsibility for the child, carrying out three one-hour communications training sessions per week to introduce new vocabulary and concepts. She has a teaching certificate

and an early childhood education certificate from the Philippines. Ms. Luna has taken a workshop in autism, which enables her to sign simple sentences. She uses signs in communicating with the child.

### **Basis for Decision**

The appeal before this Tribunal concerns the identification of the child's acknowledged exceptionality or exceptionalities. In presentation of testimony and in argument, however, both parties deal at length with the nature and the appropriateness of the child's placement and program, without objection from either side. The appellants present testimony and make argument that the identification of the child in a particular way is prerequisite to appropriate placement and program. The respondent both argues and questions on matters of placement and program, while technically withholding agreement that placement and program are at issue.

We recognize that both parties have taken this step for the purpose of more clearly establishing their respective positions. Further, we take the position that a clear separation of identification and placement is not in the best interests of the child.

The identification of the child, in our opinion, is the initial stage in the process of developing an appropriate program. In our deliberations, therefore, we have taken cognizance of the extent to which both parties have treated placement and the program within the placement as not just contiguous to identification but central to the child's case.

At the outset of the hearing, Mr. Kehoe stated that, in addition to his request for a change in identification of the child as an exceptional pupil, he asked that the Board be ordered to enter into negotiations with the appellants for the purpose of "possible future options" for the child in terms of placement. When the appellants took over the conduct of the case, it became evident that these "options" would include a transfer, under agreement presumably, between the Windsor Board and The Windsor Roman Catholic Separate School Board, of the child to a class for autistic pupils at the St. Vincent de Paul Separate School. This information was not included in the appellants' grounds for appeal, we assume, because her appeal concerned identification only and not placement.

According to testimony from witnesses representing both parties, the child suffers from both severe mental retardation and severe autism, and we conclude therefore that the IPRC has properly and correctly identified the child in the Multiple Exceptionality area, as 'Multiple Area: Intellectual (Trainable Retarded) - Communication (Autism)'. We would be well advised to simply dismiss the appeal on the question of identification, and this we will do, but the question nevertheless revolves around the matter of placement. The appellant contends that if the IPRC would identify the child as "Communication (Autism)", she would be able to negotiate with the Windsor Board to have the child transferred to a class of pupils identified solely as autistic, but no evidence in this regard was presented to us in testimony.

We have come to the conclusion from the testimony of witnesses for both parties that the child's identification, placement, and indeed the program provided in the child's present placement, are appropriate and are meeting the child's needs.

In spite of the inherent difficulties encountered by a person not trained in law, the appellant impressed us with the manner in which she conducted her case. As the appellant notes, the field of autism is barely 40 years old, and appropriate education for such children is still a matter of some contention, and we admire and commend her for her commitment to the cause of education for the autistic.

### **Decision**

The Tribunal hereby dismisses the appeal of the appellants with respect to the identification of their child.

There will be no order as to costs.

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Tom T. Houghton  
Chairman

\_\_\_\_\_  
Anne Keeton Wilson,  
Member

\_\_\_\_\_  
Kenneth J. Weber,  
Member

29 August 1988

### **OBITER DICTUM**

The Tribunal notes with some dismay the fact that the Community Legal Aid, Faculty of Law, University of Windsor, assigned a first-year law student as legal counsel to the appellants. Although Mr. Kehoe represented the appellants with diligence and to the best of his ability, we view his assignment to this case as inappropriate.