



ONTARIO SPECIAL EDUCATION (ENGLISH) TRIBUNAL File # 14

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 1982;

BETWEEN

G. R. and M. R.

Appellants

-and-

THE CARLETON ROMAN CATHOLIC SEPARATE SCHOOL BOARD

Respondent

Tribunal Members:

Tom H. Houghton	Chairman
Cathy Guntzel	Member
Kenneth Weber	Member

For the Appellants:

G. and M. R., in person

For the Respondent:

William T. Green, Q.C.

The hearing was held in Ottawa on August 16, 17, 23 and 24, and in Nepean on September 21, 1988.

Introduction

The appellants, on behalf of their child, applied to the Ontario Special Education (English) Tribunal (hereinafter called the “Tribunal”) under subsection 36 (1) of the *Education Act* (the “Act”) for a hearing for leave to appeal to a regional tribunal in respect of the placement of their child as an exceptional pupil, by The Carleton Roman Catholic Separate School Board (the “Board”). 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. R., on behalf of both parents, claims that the program provided for their child in a split Grade 1—2 class at St. Elizabeth Ann Seton Separate School (the “School”) is inadequate, “does not meet the child’s intellectual, social and psychological needs” and “falls drastically short of realizing the fulfilment of the child’s needs as identified by the Individual (sic) Placement and Review Committee of the Board (Exhibit 1). He proposes two possible solutions: (1) “... that the Board establish congregated classes for gifted children”, or (2) that “the Board buy the services of McNabb Park (Public] School, administered by The Ottawa Board of Education”.

The Respondent’s Reply

Mr. Green, on behalf of the Board, claims that the issues are quite straightforward and simple, and states, in Exhibit 2, that the child “has been placed in a Special Education program approved by the Ministry of Education”. He also contends that this program addresses the needs identified by the Identification, Placement and Review Committee (the “IPRC”), and requests that the appeal be dismissed.

In his opening remarks to the Tribunal, Mr. Green adds that we should determine whether the program offered to the child is adequate “within the meaning of the Act and whether the program meets the child’s needs, not in a state of perfection but in a situation where a program within an existing framework has been tailored insofar as is adequate to meet his or her needs”.

The Appellants’ Presentation

M. R.

Mrs. R. is the child’s mother, and she states that she is a qualified teacher. She testifies that “the child is under a great deal of stress in class because the child is very bored”. She claims the child “tantrums” before going to school because [the child] does not want to go, doesn’t have any friends in class, and the child walks around alone during recess. Mrs. R. describes the program for the child during the first year in Junior Kindergarten (referred to a ‘4K’ at the School), and asserts that the program in mathematics and science just did not meet the child’s needs. As a primary teacher herself, she concludes that the program was not challenging her gifted child. She states that the child started to read at home at one-and-a-half and read all the Grade 1 reading books by the time the child was three years old and further, that the child could read at the Grade 5 level before the child started

school.

Mr. R. introduces some materials (Exhibits 6 to 10) which he claims demonstrate the discrepancy between what the child was capable of doing in mathematics and language arts, compared to the work asked of the child by the School. He claims that Exhibit 7 shows “the total amount of written work that was done (by the child] in 4K English”.

In connection with the child’s ability to handle mathematics (Exhibits 9 and 10), Mrs. R. points out that the child was working at division and problem solving at home while the School apparently was unaware of it. She states that Mrs. Beckstead, the Board consultant, acknowledged that, “Well, we will try to do some division.’ So, this is the result of my instigation, my complaint that the child was not getting work on the child’s level... I feel that they should have discovered the child’s level and that I shouldn’t be the one — I am not working for this Board and I don’t feel that it should come from myself.”

An IPRC meeting was held in November and reconvened in December 1987. It identified the child as gifted and recommended placement with the child’s chronological peers. Mrs. R. states that the parents’ comments on the report were:

‘We agree with the needs but not the placement.’

Mrs. R. testifies that the child was to be placed with older children in a Grade 1—2 split class, and withdrawn with two other pupils from the 5K (Senior Kindergarten) class for specialized instruction, as she says, “with children from 5K who can’t read or write or can’t do any of the things that the child can do because the child won’t learn anything”. She then clarifies for the Chairman that these two children had not been formally identified as exceptional by an IPRC. The withdrawal program was to be 45 minutes per week, Mrs. R. states, from a report she received from the School at the end of June 1988. During the period from April 27 to the end of June the child was withdrawn twice, according to Mrs. R. She claims that she was having great difficulty with the principal throughout this time.

With reference to the program plan for the child that was prepared by Mrs. Beckstead (Exhibit 2, Tab 3), Mrs. R. expresses the opinion that the plan is very impersonal and “not specific enough”. She also states her objection to the independent study group in which the child was involved and which was to receive instruction in research study in the library. The child had independently gathered several books from the public library to pursue the subject of outer space, but the teacher arbitrarily changed the topic to animals, a topic about which the child was not interested.

Mrs. R. asserts that, at the Special Education Appeal Board hearing of March 4, 1988, the principal of the School, Mrs. Tuepah, indicated that there were four gifted pupils in the primary division who are the child’s peers. The child would, therefore, have an opportunity every day for an hour or so to interact with these four bright children. Mrs. R. then claims that these other pupils had not been identified by an IPRC as gifted, as the child had been. It then became known that the pupils concerned came from 5K to Grade 2 and were not, therefore, the child’s chronological peers. And when the child was withdrawn with this group, “they did computer games” in the computer room. In addition, because these pupils had not been identified as gifted, Mrs. R. claims, that “we do not know if they are really

the child's intellectual peers".

Mrs. R. states that, at the end of June, 1988, the child's report card indicated that the child had been enrolled in Grade 1 of a Grade 1—2 split class although the child was working at the Grade 2 level, but the child was to remain in Grade 1 when school re-opened in September rather than continue on with those pupils with whom the child had been working in Grade 2. She expresses the opinion that the child "was held back because the child is too young to go to Grade 3, not because the child is not capable of it, but the child must be retained because you (sic) have got to keep the child with the child's age group because the Board knew that the child's needs were to be with children who are of chronological and mental age".

In cross-examination, Mrs. R. agrees with Mr. Green that neither she nor Mrs. Tuepah wanted the child to be accelerated from 5K to Grade 2.

Mrs. R. states her request for a "100 per cent program that will meet the child's needs for 100 per cent of the time that the child is in school, not 50 per cent, not four per cent".

Mrs. R. describes the process used to identify and place gifted pupils in the Ottawa public school system where all pupils in the primary division who are suspected of having exceptional ability are formally tested with the Wechsler Intelligence Scale for Children — Revised (the "WISC—R"). If scores in the 99.6 percentile are obtained, they are eligible to be placed in a congregated class with similar pupils.

In answer to a question from her husband regarding the child's progress in the placement in the Grade 1—2 class, Mrs. R. states, "No, the child has not made any academic progress and I feel that [the child] has gone backwards in [the child's] love of learning. I feel that the child has got an attitude now that is not conducive to learning at all.... The child never was so negative before...."

JANICE LEROUX

Doctor Leroux is an associate professor in the Faculty of Education, University of Ottawa, where she conducts graduate studies in gifted exceptionalities, and is presented by Mr. R. as an expert witness in the field of education for the gifted.

In reference to Exhibit 5 (PR Activity, Spring Session) Dr. Leroux states that, in her opinion, the program does not contain evidence of assessed growth. In answer to a question from Mr. R. about the special program for the child covering 45 minute per week, Dr. Leroux expresses the opinion that "without a great deal of resource support a teacher would have a hard time meeting the needs of any individual child 45 minutes a week when so much differentiated program is required".

Dr. Leroux expresses the opinion that, "To provide special services for exceptional children who are deemed gifted one has to have teachers who are able to assess the child, to observe the child, to plan a specific program that is specifically addressing the skill and developmental level of a specific child. Then having done that and implemented the program, the teacher has to be able to evaluate whether or not that has met the needs and that there was, in fact, achievement occurring. If you do not have a

teacher who has that specific training in observation, in assessment, in differentiation and then evaluation for gifted youngsters, then I cannot see that you have an appropriate program setting and an appropriate differentiated program for an exceptional child.” She concludes that Exhibit 5 is “just a checklist of activities” and “there isn’t sufficient information here or, in my mind, even sufficient specific planning for an individual in this plan”.

Referring to Exhibit 2, Tab 3, Dr. Leroux explains that, for the child, “Identified needs are not there. Those are identified needs for any child in the school system across Ontario. There has to be an indication of present level and then specific methods addressing the growth of the child. It amazes me that a child’s name is here at all on this program plan, it is that general. It does not account for other possible deliveries; i.e., a mentor, clustering. Some of the methods are, in my experience, contrary to the demonstrated needs of gifted youngsters.... This is far too general to be appropriate for an individual program.”

In reply to questions from Mr. R. about the various tests administered to the child, including the report of the WISC—R prepared by Dr. Faith M. Silver, the Board’s Psychoeducational Consultant, and Dr. Charles B. Murray, the Board’s Psychologist (Exhibit 12), the Gates—MacGinitie Reading Test, the Peabody Picture Vocabulary Test (the “PPVT”), the Stanford Diagnostic Mathematics Test, the Canadian Cognitive Abilities Test (the “C—CAT”), the Teacher Screening Device for Gifted Children in the Primary Years, the Parent Inventory (Exhibits I3a to I3e), Dr. Leroux comments: “...the child really is one of those youngsters who has demonstrated that [the child] has the ability to benefit from differentiated programming for the gifted. If I were the child’s parent I would be moving heaven and earth to make sure that some different programming was available for the child in my school system. I do not see that 45 minutes a week is going to address what is apparent in this child’s individual program package needs. I would like to compliment the Board in its assessment measures insofar as they appear to be fairly varied and use multiple criteria, but assessment is no good unless it translates into a program that is specific and addresses the educational needs of the individual child.... I cannot see 45 minutes a week translated into an action plan for the individual.”

In replies to questions from Professor Weber, Dr. Leroux confirms that, concerning the PPVT, the percentile rank for the child at 98 and the age equivalent at 7.7 indicate a level of two to three years above the chronological age.

In response to the Chairman’s question regarding the child’s score on the WISC—R (Exhibit 12) placing the child at the 99.9 percentile, Dr. Leroux states, “It is clear in my mind that...two to three years beyond what is the standard chronological mental age, is the benchmark. Now, because of scatter some children might score a 96, 97 percentile and then they would be showing 99.5 on one of the other subtest scores.... Yes, it is two to three years anywhere from 96, up, percentile rank depending on where the scatter occurs or where the strength occurs. So, this is consistent with the kinds of children who are placed in congregated classes for gifted at the primary level, research by Karnes and Shwedel.”

Dr. Leroux concludes her testimony by stating that, in her opinion, pupils who score in the 99.9 percentile rank on the WISC—R will be better served in a congregated class with children with similar ability and interests and with teachers who have training to work with these children. “There is no

research evidence that will claim that they are other than successful in such a setting.”

J T

Mrs. T is principal of St. Elizabeth Ann Seton Separate School. She has held that position since 1986 and has been principal from the time the child was first enrolled in 4K until the end of June, 1988.

Mrs. T holds a B.A. degree from Queen’s University and a Master’s in Education degree from the University of Ottawa. She also holds the Specialist Certificate in Special Education, as well as other certificates and credits in education.

The witness states that she first met the appellants on March 11, 1987 at a school meeting held in response to their letters indicating that the child should be placed in Grade 2 in September, 1987. At the time the child was enrolled in 4K. At this meeting, Mrs. T indicates the School ‘agreed it would collect and assess information on the child during April and May, and would hold another meeting in May to discuss the child’s placement in September.

The plan for assessing the child included a teacher observation record, the PPVT, the Croyden Checklist, and the Brigance Diagnostic Inventory of Basic Skills. The purpose, according to the witness, was to diagnose needs, formulate objectives, and select and organize content for the child’s program. Mrs. T testifies that various teachers and consultants with expertise in gifted education were involved in this process.

On April 30, 1987, the witness states, a meeting was held with the appellants to discuss the results. Mrs. T says that the School indicated to the parents that the child is indeed of superior ability academically, and seemed to enjoy the program [the child] was in (4K), and that the child had scope and range to develop academic and developmental skills. The School indicated to the parents at the meeting the opinion that a Grade 2 placement for the child in September would be inappropriate because of developmental differences between the child and the Grade 2 pupils. At the same time the School recommended placing the child in 5K, taking into account in its programming the child’s special abilities. Mrs. T feels that the appellants were upset by this recommendation.

At a meeting on May 25, 1987 between the appellants and the School, the parents stated their wish to go ahead with an IPRC. Mrs. T testifies that Mrs. R. stated at this meeting, she would be happy only with a Grade 2 placement or placement in a congregated class for the gifted. Mrs. T asserts that she explained to the parents that the Board does not operate congregated classes for the gifted (at the primary level), and that the establishment of such a class is beyond her jurisdiction as principal.

The child began school in September, 1987 in 5K. The witness says that her teachers reported the child as “happy, enthusiastic, delightful, a wonderful child to have in the classroom”. She also states that the teachers were aware of the child’s superior academic ability and were programming to account for it. Mrs. T says that meetings with the teachers on the subject of the child, continued more or less regularly until the IPRC meeting of November 4, 1987.

At the IPRC meeting the teachers again conveyed their impression that the child is superior, that the child was happy, and that they were programming in the 5K class to meet the child's needs. The parents stressed to the IPRC their desire to have the child in Grade 2. The IPRC identified the child as gifted and recommended placement in the 'regular' program.

Following the IPRC decision, according to Mrs. T, the School kept constant watch on the child's program, and eventually concluded that the child could benefit from a full-day program in a split Grade 1—2. When this was proposed to the appellants in December, the witness says they indicated a Grade 3 or 4 placement might be more appropriate as this was the child's reading level at the time, they felt.

On December 15 the IPRC reconvened at the parents' request, and at this time, Mrs. T testifies, Mrs. R. expressed a wish for placement of the child at McNabb Park Public School in Ottawa where there is a congregated class for gifted pupils in the primary division. At the same time a request for an appeal hearing was discussed.

During re-direct examination the witness reiterates that the Board does not operate a congregated class for primary pupils identified as gifted. She also states that to her knowledge there is not a specific percentage-time withdrawal program either, and that the Board has no alternative for the child other than what was offered at the School.

In the meantime, Mrs. T testifies, the School intensified its efforts to modify the child's program, as well as the program of some other primary pupils it felt would benefit from enrichment. Specifically, a procedure was arranged to allow certain pupils from the primary division to meet for specific opportunities in differentiated programming. These were units lasting from four to five sessions, and involving pupils from 5K to Grade 3. One such activity was the 'recorder theme' (Exhibit 5).

In re-direct examination Mrs. T acknowledges that for this special program there were three special events and that the child took part in two. She also acknowledges that the other children in the program had not been before an IPRC and identified formally as gifted.

At the Special Education Appeal Board hearing of March 4, 1988 the appeal of the appellants was dismissed. The witness says that after this she received a notice from the parents that they would allow the child to be placed in a Grade 1—2 split class without prejudice to their intent to request a hearing before a tribunal. The child was so placed, according to Mrs. T, and there continued a regular monitoring of the child's program.

In the spring of 1988, the witness testifies, it was determined that the child found the Grade 2 French program too difficult because the child did not have the vocabulary background. Also, Mrs. R. called the School to state that the child was finding the work in mathematics too easy.

Evidence of the special programming for the child, the witness states, is in the daily timetable for June, 1988 (Exhibit 23). This information is further developed in Exhibit 24 (Academic Program) wherein is indicated, according to the witness, the School's attempts to meet the child's needs by special adaptive instruction and differentiated curriculum.

In re-direct examination the witness repeats that there was an appropriate program to meet the child's needs but acknowledges that there had been no formal evaluation of the child's progress because the child had not been enrolled in it for a sufficient length of time. There had been daily evaluation, she says, but not a cumulative one.

Mrs. T states she feels that the relationship between herself and the parents was "adversarial" and at best, difficult. She testifies that she believes she is perceived as an impediment to acceleration of the child or to the placing of the child in a congregated class. Mrs. T states, however, that she acted at all times within the mandate of the Board.

J D

JD is the principal of McNabb Park Public School under the jurisdiction of The Ottawa Board of Education (the "Ottawa Board"). [It was reported to the Tribunal that when school reopened after the summer recess, in September 1988, the child's parents had withdrawn the child from St. Elizabeth Ann Seton School and enrolled the child in a special education class for the gifted in McNabb Park School.]

JD testifies that he has been principal of McNabb Park since 1982 at which time a congregated class for highly gifted pupils in the primary grades was established. As he further testifies, "The program at McNabb (Park) is exclusively designed for the highly gifted who need to associate with their chronological and intellectual peers." He explains that the original plan of the Ottawa Board was to provide a special program for "less than one-and-a-half per cent of the population, and felt that the needs of these youngsters could be met better by bringing them together with other children of their own intellectual abilities and their own interests.... We have approximately 80 pupils...from Grades 1 to 4 inclusive." He adds that, to enter the program a pupil must score at or above the 99.6 percentile on the WISC—R., and describes the various tests that are administered, starting at the Kindergarten level, to determine who gets into the program. The child is now enrolled in Grade 1 in a combined Grade 1—2 class of 20 pupils. Under cross-examination by Mr. Green, JD confirms that the child is considered to be a non-resident pupil, and that the child's parents are paying fees to the Ottawa Board for the child's education at McNabb Park School.

THE RESPONDENT'S PRESENTATION

Marilyn Beckstead

Mrs. Beckstead is a consultant in the Student Services Department of the Board, having responsibility for gifted programming throughout the Board's jurisdiction. She serves as a support resource person to those who are serving gifted pupils such as principals, classroom teachers and special education teachers.

Mrs. Beckstead describes the system used by the Board, stating that: "We don't operate on an itinerant basis because we have a gifted program within each community school. Within each school,

in addition to the regular resources teacher, we have one person who is responsible for a withdrawal program at the junior level and as a resource to other teachers in the school. They are my primary contact group...and then the classroom teachers would work through those teachers and the resource teacher and then myself if it was deemed necessary.”

In regard to identification in the primary division, Mrs. Beckstead states that, if, after a preliminary screening, a teacher believes that a pupil has above-average ability, he is given the C—CAT. This group testing is followed by an in-school conference to determine his or her needs. An individual assessment may follow, and then, as in the child’s case, the pupil may then be referred to an IPRC. If considered necessary the WISC—R may be administered.

Mrs. Beckstead states that the program arrangements are flexible and may be delivered within the regular class through modification to the program. Some children are withdrawn by a resource teacher or a teacher of the gifted for periods of time to work in cross-age groupings. Or, in other cases the regular teacher may use the resource teacher as a resource for gifted pupils within the class.

A formal IPRC meeting is not usually held for a primary pupil, Mrs. Beckstead states, because the Psychology Department of the Board is concerned about the reliability (sic) of the tests used with very young children. She also contends that the philosophy of the Ministry of Education “is to meet individual needs within the regular classroom, and we are trying to do that with all the exceptionalities.”*

On the question of acceleration for the gifted, Mrs. Beckstead expresses the opinion that acceleration is a promotion policy which rests with the principal. She then proceeds to clarify the difference between a ‘grade acceleration’ and a ‘content acceleration’.

**contrary to this statement, however, we note, from page 48 of the Minister of Education’s Special Education Information Handbook 1984:*

“Part IV: SCHOCL BOABD PROGRAMS AND SERVICES

...

5. *Spectrum of Educational Settings*

Boards are encouraged to provide, directly or indirectly, a continuum of service that would provide as full a range of placements as possible to meet the needs of exceptional pupils. The primary focus in the development of such a range of placements is to provide an exceptional pupil with the strengths and capabilities needed to return to a regular classroom or achieve success in a specialized setting.

Specialized instructional settings are based on the needs of a pupil who is not experiencing success in the regular setting. The opportunity for a specialized setting allows for greater pupil-teacher interaction and a greater focus on individual needs. The hierarchy of specialized settings reflects the intensity of this interaction and individualization required for a pupil to demonstrate success.

In many cases, the degree of supplementary assistance needed by an exceptional pupil can be met in the regular classroom, through the provision of specialized consultation to the teacher, special equipment, and the availability of additional persons with specialized skills or tasks to perform.

In order to achieve a more intense learning experience it may be deemed advisable to provide a setting in which a greater degree of individualization is possible. In this instance the pupil may meet with a qualified special education teacher. Such a session may be conducted on an individual or small group basis. This option permits the pupil to maintain a regular class placement.

The needs of some pupils are such that a highly specialized setting is required. At this level of need, the self-contained special education classroom may be the placement recommended.”

“It is inherent in a gifted program that a student — you may compact a program and cover material in a shorter period of time, so in that sense there would be an element of acceleration. Then also there might be the whole grade acceleration which is promotion, say, from Grade 1 to Grade 2 and may have very little to do with the program itself.”

In further testimony Mrs. Beckstead describes the child’s full-day program in Mrs. Major’s classroom (the Grade 1—2 teacher). “First of all, there was the work that the child was doing in the regular classroom, some of which was modified and some of which would be at Grade 1 level according to the child’s needs. There was also a withdrawal component where the child would be withdrawn with a cross-age grouping for specific periods of time for special ed. activities.”

Concerning the evaluation of this program, Mrs. Beckstead testifies: “Now, the evaluation of this was left to the teacher. We discussed the importance of self-evaluation particularly with gifted children and peer evaluation. One of the goals of gifted education is to help the student to become an independent self-directed learner, and one of the most effective means of doing that is to be able to look at your own experience and benefit by that so that when you are planning for the next experience you can make whatever adjustments and changes are necessary.”

In summary, she states, “We had three components: the regular program modified; withdrawal with pupils from the class; withdrawal with a cross-age grouping. Then we tried to apply some general principles of gifted programming such as providing opportunities for interdisciplinary study, providing for the child to study in areas of interest, to look at learning styles.”

In answer to a question from the Tribunal regarding the time breakdown of the May-June, 1988 program, Mrs. Beckstead testifies that the three basic components were arranged as follows: “First of all, the program is 75 per cent English and 25 per cent French.... The English program is divided up into 25 per cent language arts, 25 per cent math and 50 per cent related areas, environmental studies, phys. ed., music, etc. So, of the 25 per cent of language arts five days a week the child was withdrawn for two of those blocks, so 150 minutes the child would be in the library working on research with a small group... . The remaining three days I cannot give you an exact breakdown because sometimes the child would work with the whole group doing activities and sometimes the child was working...to develop written language through creative writing... . There would be a portion

of the other three days spent on independent activities.” “In math it was my understanding that the child was generally not working with the rest of the class because the teacher was attempting to do an assessment and then to give work independently at the child’s level. The withdrawal with the cross-age grouping would have taken one day a week and I believe it was for 25 per cent, a quarter day one day a week.”

In conclusion, Mrs. Beckstead expresses the opinion that the teacher (Mrs. Major) did an “excellent job of making modifications as she went along”, and states that “the elements of a good gifted program for the child were there. I think that given the opportunity in September it would have continued to develop and evolve.” She further states that, in her opinion, the program designed for the child reflected and continues to reflect the child’s needs.

HELLEN BOGIE

Mrs. Bogie has been Co-ordinator of Student Services for the Board since September 1987. In her testimony she states that she first became involved with the appellants when Mrs. Beckstead informed her in the spring of 1987 that the child would be considered by an IPRC as a possible exceptional pupil.

In answer to Mr. Green’s only question in examination-in-chief, Mrs. Bogie confirms that she told Mrs. R.: “We were working with the child and were modifying the program but we could not change the child’s placement from the Kindergarten classroom to the full-day program which the Committee had recommended because Mrs. R. had not given us permission to do so... . By law we are not permitted to change the actual placement of the student.”

In cross-examination by Mrs. R., Mrs. Bogie agrees that the original IPRC (November 4, 1987) recommended a full-day program for the child. Later on Mrs. Bogie clarifies the apparent difference in interpretation between ‘regular’ and ‘full-day’ programming for the child. She notes that the IPRC recommended a regular program although it appears as if the parents concluded that ‘regular’ meant ‘full-day’.

In connection with a disagreement over the effect of a transfer from the current placement, Mrs. Bogie explains: “I tried to point out that the child would have to remain in the Kindergarten program and could not take part in the regular program that had been recommended because you (Mrs. R.) had not signed the form.”

In answer to a question from Mrs. R. concerning Mrs. Bogie’s statement contained in Exhibit 2 (Tab 4, p. 1), that ‘many of the statements made by the appellants are based on a philosophical difference and are not true issues’, Mrs. Bogie admits: “The program that we were recommending and were willing to implement for the child was basically not very different, in fact, hardly different from the program that we heard described by JD this morning. Basically, according to me, it is a philosophical difference. They [McNabb Park] provide the program in a congregated setting. We prefer to keep our students in the community schools in an integrated model... . The content of the program, the way it is presented - in fact, I was pleased to see in the report card which I just had a cursory view of - I mean, the child is in a recorder group, for example, and that is exactly what the child was in last year.”

By way of clarification Professor Weber is told by Mrs. Bogie that the Board purchases a large number of educational services from other school boards in the Ottawa area, especially in vocational programming, programs for the autistic, and the physically handicapped “for those parents who prefer their children in a congregated setting... . We have a special agreement in the area for providing programs for the mentally handicapped so we purchase a large number of those programs as well.”

Basis for Decision

In the perspective of the Tribunal, this case has been a difficult one in a procedural sense. The fact that the appellants were not represented by counsel inadvertently raised a number of problems, not the least of which was the issue of whether their case would be fully and competently presented. In the interests of fairness, therefore, and because our mandate is to act in the best interests of the pupil, the appellants were allowed considerable leeway in their presentation, over the objections of the respondent’s counsel, Mr. Green. The Tribunal takes the position that, although from time to time it was felt necessary to depart from a strict adherence to the rules of evidence and judicial procedure, this occasional granting of permission to vary from standard procedure was even-handed. Both respondent and appellants benefited equally. Moreover, such variance from time to time was necessary, we feel, to educe the information and evidence required to make a decision that is in the child’s best interests. It is our opinion that the testimony and evidence put before us has enabled us to make a unanimous determination that is both correct and in the child’s best interests. Given the testimony and evidence before us, irrespective of how it was presented, our determination would be the same.

Since both parties agree that the child is a gifted pupil, the issues in our view are:

1. whether the child’s degree of giftedness is such that a very special differentiated placement is in the child’s best interests; and
2. whether the program within such a placement is being achieved or indeed is available in St. Elizabeth Ann Seton School, or for that matter, in any school under the Board’s jurisdiction.

1. Degree of Giftedness

On the first issue the Tribunal finds that the child is not just very highly gifted, but also is the kind of rare pupil who appears in only very small numbers in any school system. Notwithstanding the argument that WISC—R scores for subjects when tested at the child’s age, may offer less validity than pupils slightly older, the child’s score is so exceptionally high (99.9 percentile), that even accounting for statistical regression, the child’s score would still be at the upper limits of the Very Superior range. These WISC—R results are reinforced by scores of other standardized tests, such as the PPVT in which the child scored in the 99th percentile, and the C—CAT in which the child’s score is also in the 99th percentile. In the Keymath Diagnostic Arithmetic Test, the child scored above average.

Behavioural characteristic checklists prepared by teachers (e.g., the Scales for the Rating Behavioural

Characteristics of Superior Students (sic) by Renzulli, J. et al.) indicate that the level of the child's superiority in the areas rated, is significant. Likewise, the parent-completed checklist indicates characteristics of significant giftedness.

We also have exhibits of the child's work and testimony of the mother, all of which point to a profoundly superior intellectual ability.

In short, we have ample evidence to conclude that the child is very highly gifted, and we have no evidence or reason to conclude that the child's demonstrated ability is mere precocity, or the ephemeral product of intense environmental stimulation.

2. Placement

Since there is no doubt in our opinion that the child is a very highly gifted pupil, and equally, since there is no doubt in our opinion that the child requires differentiated programming to meet [the child's] needs, the questions remain then, are the child's special needs being met in the placement at St. Elizabeth Ann Seton School, or, as the parents contend, should the child be placed in a congregated class with pupils like the child?

In arriving at its determination on this issue, the Tribunal relies heavily on two sources of evidence and testimony: the evidence of expert witness, Dr. Leroux, and the evidence of Mrs. Tuepah, Mrs. Beckstead and Mrs. R. regarding the quality and quantity of the child's program, as well as their accounts of the sequence of events over the time during which the placement was put into effect.

We regard as significant the opinion of Dr. Leroux, that the child's test scores are consistent with those of children who are customarily placed in congregated classes for the gifted at the primary level. We are drawn, in her testimony, to research that shows children with WISC—R percentiles of 99.9 are better served in congregated classes with children of similar ability, and with specially trained teachers. (We note particularly the research of Karnes, M.B., Shwedel, A.M., and Kemp, C.B. "Maximizing the potential of the young gifted child." Roeper Review, April, 1984; as well as Thompson, B.G. "An experimental program for highly gifted children in the early primary grades." Gifted Child Quarterly, 31, 1, 1987.)

The expert testimony of Dr. Leroux, which was not disputed by the respondent's counsel during cross-examination, nourishes the conviction of the Tribunal that the child is indeed the kind of pupil who could benefit from and should be placed in, a congregated class.

Before outlining our view of the alternative program designed for the child at St. Elizabeth Ann Seton School, it seems appropriate at this point to note the argument that although the School does not have a congregated class for primary pupils, it is nevertheless operating according to the special education plan of the Board as approved by the Minister of Education under the authority of Regulation 274: Special Education Programs and Services. The School and the Board, in this argument, are acting properly according to the Act. In the view of the Tribunal, however, Regulation 274 requires a board to outline its plan of delivery disclosing the methods by which and the time in which it will be in compliance with paragraph 7 of section 149 of the Act. The Board's argument fails to take into account

the significance of Ontario Regulation 554/81: Special Education Identification Placement and Review Committees and Appeals, which establishes procedures for the resolution of disputes over the identification or placement of individual pupils, that may arise irrespective of the existence of an approved special education plan.

The Act obligates a tribunal to act in a pupil's best interests, irrespective of whether a school board is operating according to the terms of an approved special education plan. It is our opinion, therefore, that simply because the Board does not provide congregated classes for gifted primary pupils, within its approved plan, this is not sufficient reason of itself to support the alternative: namely, that the child's needs must be met in a mainstreamed class. (We note that the Board's special education plan was not presented in evidence; nor was the Tribunal offered any rationale for the Board's decision against such congregated classes, despite the importance of this particular issue in the case.)

Notwithstanding the above, we acknowledge the fact that it may indeed be possible to program in mainstreamed primary classes, for pupils like the child. We also acknowledge that there has been a tradition in North American education, albeit increasingly under attack, to withhold identification and congregated placement of primary children suspected of being gifted. While this awareness does not modify the Tribunal's opinion in the child's case, it does lead to lengthy and intensive consideration of the child's placement as explained in the testimony of Mrs. Beckstead, Mrs. Tuepah and Mrs. R. particularly, and of Mrs. Bogie generally.

We find that the placement does not meet the child's needs in at least three ways.

The first area is in the extent of differentiation. From the evidence presented, the frequency and intensity of the special activities designed and provided for the child are simply insufficient to meet the needs of someone of the child's level of giftedness. To organize significant enrichment on the episodic basis as presented in evidence, is not adequate. The child is not gifted part-time.

Secondly, the nature of the special placement does not seem to us to address the discrepancy between the achievement level customarily expected of the child's age and what this young pupil is actually capable of doing. The concern of the Tribunal in this matter is compounded by evidence of the child's ability in reading and mathematics and the unchallenging nature of what [the child] was given to do in regular class time (see Exhibits 6 to 10). This is a serious issue for the child in that if an appropriate and fully developed program is not established for the child in the important early years of school, there is real danger that the child will become disenchanted and slide slowly into passivity and underachievement. It is crucial that the child's brilliance not become a handicap, or be addressed on only a periodic - or even worse - haphazard basis. It is obvious that some effort was made on the child's behalf by the School. The program, nevertheless, lacks the depth and consistent focus to appropriately meet the child's needs.

Finally, a third matter requires mention in our assessment of the appropriateness of the child's placement. In tracing and analyzing the sequence of events that ultimately led to a form of differentiated programming for the child by the spring of 1988, we are struck by what appears to be a

lack of impetus on the part of the School toward coming to grips with and managing the child's case. Granted, we have the testimony of Mrs. Tuepah and the appellants that the situation had become contaminated by an adversarial atmosphere. Still, the pace at which the child's case moved forward, and the apparent lack of focus and professional dispatch on the part of the School, lead us to conclude that the child's needs were not being met there.

Taken together, these three elements, as well as the evidence of the child's degree of giftedness, reflected against the expert testimony of Dr. Leroux on the education of the gifted, convince us that the child's needs would be best met in a congregated class.

Decision

In accordance with subsection 36 (6) of the *Education Act*, the Tribunal hereby grants the appeal of the appellants and orders as follows:

1. The Carleton Roman Catholic Separate School Board shall enter into an agreement with The Ottawa Board of Education to provide a special education placement for the child in a congregated class for gifted pupils operated by the said Ottawa Board;
2. The Carleton Roman Catholic Separate School Board shall pay the required fees for the child calculated in accordance with the regulations;
3. This order shall take effect from the first school day in December, 1988, and shall remain in effect until such time as The Carleton Roman Catholic Separate School Board establishes a congregated class for gifted pupils that the child would be eligible to attend, or until such time as the parents and The Carleton Roman Catholic Separate School Board mutually agree to some other placement, whichever shall first occur.

There will be no order as to costs. _____

Tom H. Houghton, Chairman

Cathy Guntzel, Member

Kenneth Weber, Member

16 December, 1988