



ONTARIO SPECIAL EDUCATION (ENGLISH) TRIBUNAL File #3

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 1975.

BETWEEN

H. V. AND P. V.

Applicants

- and -

THE BOARD OF EDUCATION FOR THE CITY OF ETOBICOKE

Respondent

Tribunal Members:

Tom H. Houghton	Chairman
Grant MacDonald	Member
Margaret Pollard	Member

For the Applicants:

Marie A. Irvine

For the Respondent:

Gary Vipond

The hearing was held in Toronto on February 2, 1984

The applicants on behalf of their child have applied to the Ontario Special Education (English) Tribunal (the "Tribunal") for leave to appeal to a regional tribunal under subsection 36(1) of the *Education Act*. The parents are appealing both the identification and placement of their child as an exceptional pupil.

Identification

On behalf of the parents, Ms. Irvine contends that, when the Special Education Identification, Placement and Review Committee (the "I.P.R.C.") held its meetings in May and June 1983 to review the placement of the student for the next school year, the I.P.R.C. did not define the student's exceptionality, and the parents assumed from the placement recommended that the I.P.R.C. must have identified the student as "educably retarded". Ms. Irvine contends that the student should have been identified as having a severe learning disability.

At the September meeting of the I.P.R.C., Ms. Irvine contends that the student was identified as "multi-handicapped". She notes also that the I.P.R.C. used the term "slower learner" with reference to the student.

The issue was further confused, according to Ms. Irvine, by the decision of the Special Education Appeal Board (the "Appeal Board") on October 13, 1983 when it dismissed the parents' appeal regarding the identification of the student as "educably retarded". Ms. Irvine argues that the dismissal of the appeal in effect leaves the student still labelled as "educably retarded".

On behalf of The Board of Education for the City of Etobicoke (the "Board") , Mr. Vipond states that the Board agrees with the main points of the parents' arguments, but contends that at no time was the student identified by the board or its committees as "educably retarded". In fact, he points out that the I.P.R.C. at its September 28, 1983 meeting, identified the student as "multihandicapped".

We find an obvious need for clarification of the terms used regarding the identification of the student as an exceptional pupil. We refer to page 5 of *Special Education information Handbook, 1981* published by the Ministry of Education, Ontario, under the heading, "Identification and Description of Pupil needs":

When identifying exceptional pupils the Identification, Placement, and Review Committee is obliged to employ the definitions of exceptionalities provided by the Minister of Education. These will be found in the "Definitions" section of this document (page 40).

It is evident from the submissions of both parties that several terms were used, such as "educably retarded", "learning disability", "slower learner", "multihandicapped", and therefore confusion and disagreement remain on the specific identification of the student's exceptionality.

Placement

The Counsel for the parents asserts that the Appeal Board erred when it agreed with the I.P.R.C. and dismissed the appeal against the student's placement in the Special Programs (Primary) Class. In so doing, the Appeal Board recommended continued placement in a program which, Ms. Irvine contends,

does not meet the student's educational needs. Ms. Irvine states that the student has "...been shown to have made minimal progress to date..." in the Special Programs Class. The confusion noted earlier over the terms and definition of the student's exceptionality, according to Ms. Irvine, affects the nature of the placement in an appropriate program. Ms. Irvine submits that the parents feel that their child should be placed in a Special Programs (Communications — Elementary) Class.

The Board's representative, Mr. Vipond, argues in his submission that the student's Special Programs (Primary) Class placement with withdrawal for five (5) hours per week on a 1:1 or 1:2 ratio for communication assistance, is the most appropriate placement for the student at this time. It is evident that there is a significant disagreement as to the appropriateness of the student's placement.

Another matter of concern to the applicants is the refusal on the part of the chairman of the Appeal Board to hear further evidence, especially from Dr. W. G. Ford and the parents, after the Appeal Board received additional information from the I.P.R.C. meeting of September 30, 1983. Ms. Irvine states that such refusal deprived the Appeal Board of relevant information necessary to its decision.

Consideration of subsections 7(8) and 7(9) of Ontario Regulation 554/81: *Special Education Identification and Review Committees and Appeals* is required.

These subsections provide:

(8) Any person who in the opinion of an Appeal Board may be able to contribute information with respect to the matters before the Appeal Board shall be invited to attend the discussion and the discussion shall be conducted in an informal manner.

(9) Where in the opinion of an Appeal Board all the opinions, views and information that bear upon the matters under appeal have been presented to the Appeal Board, the Appeal Board shall adjourn the discussion and within three days thereafter may,

(a) agree with the committee and dismiss the appeal;

(b) disagree with the committee and refer the matter back to the committee stating the reasons for the disagreement; or

(c) where the Appeal Board is satisfied that a pupil in respect of whom an appeal is brought is not in need of a special education program or special education services, set aside the determination of the committee that the pupil is an exceptional pupil.

It is our opinion that the Appeal Board would have been wise to permit Dr. Ford to appear, particularly since the Appeal Board was in receipt of new information in the matter of the I.P.R.C. report of September 30, 1963 which for the first time named the student's exceptionality as multi-handicapped.

Leave to Appeal

Special Education Tribunals have been established for the purpose of assisting parents and school boards to resolve disputes with regard to identification or placement of exceptional pupils. In this case the issue is both the identification and placement of a pupil who has been identified as exceptional.

With respect to the application for leave to appeal to a regional tribunal, we find that there is a significant controversy between the parents and the Board concerning both the identification of the student as an exceptional pupil and the appropriateness of the special education placement. In addition we question the Appeal Board's failure to ensure that "...all the opinions, views and information that bear upon the matters under appeal have been presented to the Appeal Board...." The nature of this dispute is such that in our judgement a further adjudication by a regional tribunal is warranted.

Accordingly, the Tribunal orders that leave to appeal to a regional tribunal be granted.

T. H. Houghton, Chairman

February 7, 1984