



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 1990.

BETWEEN

Mr. G. T. K., Appellant

-and-

Simcoe County District School Board, Respondent

Tribunal Members

Marilyn Thain	Chair
Derryn Gill	Member
Noel Williams	Member

Appearances

G.K.	Parent, Appellant
C.S.	Parent, Advocate
D.C.	Advocate
Brenda Bowlby	Counsel for the Simcoe County District School Board (SCDSB)
Doug Tateishi	Associate Director for the SCDSB
Robert Stones	Principal of Special Education for the SCDSB
Stephen Kelly	Secretary

The preliminary hearing was held February 7, 2006, in Barrie, Ontario.

Decision

The Ontario Special Education English Tribunal has rendered its decision on the issues heard at the Preliminary Hearing, February 7, 2006.

1. Due Process

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.

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 by 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 and placement.

The Tribunal's jurisdiction is limited to that provided to it by its enabling legislation. In this case, section 57 of the *Education Act* gives the Tribunal the jurisdiction to determine a student's identification and placement. The Tribunal has no authority to review the conduct of other administrative bodies under the *Education Act*, including Identification Placement and Review Committees and Special Education Appeal Boards. Accordingly the Tribunal has no jurisdiction to review the due process issue raised by the Appellant regarding the conduct of the school board.

2. Placement

The Special Education Tribunal will hear the appeal of the appellant for the minor child. It is not possible to determine whether the Tribunal has jurisdiction over the placement requested by the appellant without first hearing the evidence. The Tribunal's decision on jurisdiction will be rendered after the evidence is presented.

No evidence will be heard in regards to the conduct of the school board during the hearing of the appeal because the due process issue has no relevance to the identification or placement of the child. The hearing will deal solely with the issues of identification and placement.

3. Reimbursement of Fees

This issue of reimbursement of fees has been resolved. The Simcoe County District School Board has agreed to reimburse the C.S. for fees that have been paid and to pay all future fees for e-learning.

Marilyn Thain, Chair

February 16, 2006