



Y v. XX District School Board

The hearing described in the following decision of the Ontario Special Education (English) Tribunal was ruled closed by the Tribunal under subsection 9(1)b of the *Statutory Powers and Procedure Act*. Accordingly, the names of parties, witnesses, schools, school boards and municipalities have been altered in order to protect the anonymity of individuals of the school board.

William Wyman Secretary Ontario Special Education (English) Tribunal

Ontario Special Education (English) Tribunal

Between

XY as represented by Ms. Y, Appellant

And

XX District School Board, Respondent

Tribunal Members:

Marilyn Thain	Chair
Paula Barber	Member
Donna Gracey	Member

Appearances:

Ms. Y On behalf of XY Brenda Bowlby Counsel for the XX District School Board

Secretary: Mr. Peter Ferren

The hearing was held at Hotel A in Municipality A, Ontario on May 9 - 11, 2001 and September 11 - 13, 2001.

Introduction

At the opening of the hearing the Chair stated that this Tribunal would be guided by the Education Act R.S.O. 1990, c.E.2, section 57, the regulations made there under, and the Statutory Powers Procedure Act.

Arguments from both parties were heard, and a decision to close the hearing was reached. The Tribunal accepted Ms. Bowlby's argument that "*allegations against certain persons employed by the XX District School Board were very serious, very personal and should not be made public.*" Ms. Bowlby stated "*the personal matters raised are of such a nature that their personal interests outweigh a public hearing in this case.*" (Transcript, Vol. 1, P. 16-17). The Tribunal felt this case met the test under subsection 9(1) (b) of the Statutory Powers Procedure Act because the interests of the persons potentially affected by the disclosure of personal information outweighed the interests of having the hearing in public.

Ms. Y, on behalf of her child XY, brought forward the case to appeal the placement of her son, XY. Ms. Y presented her case without representation. Ms. Bowlby was counsel for the XX District School Board.

Witnesses

Summaries of testimony are presented with the Appellant's witnesses first, followed by the Respondent's witnesses.

For the Appellant Ms. A

Ms. Y

For the Respondent Mr. B

Ms. C

Ms. D

Dr. E

Ms. F

Appellant's Position

Ms. Y, the appellant, requested a Tribunal to appeal the Identification Placement Review Committee's (IPRC) decision of April 27, 2000, to place XY in a categorical placement at the child's home secondary school, Secondary School A. She stated that the IPRC changed XY's placement from a gifted class placement to a categorical class placement – gifted. The IPRC did not have parental consent. She stated that the grade nine categorical placement offered to XY was not appropriate for the child's needs.

She said that XY needs a gifted class placement, and that such a placement is not available within the XX District School Board, at the secondary level. She had, in consequence, enrolled XY at Secondary School B in the ZZ District School Board. Ms. Y requested the Tribunal find that the gifted placement at the XX District School Board should be continued as the child's placement for grade nine.

XY was identified as gifted when in grade seven, and was placed in a gifted class at Public School A for [the child's] grade eight year. She said that this placement decision was consistent with parental preferences, and it met XY's needs. She stated that this program was successful for XY, that it should be continued, and that "*the placement proved so positive for[the child], that[the child] wanted more of it.*" (Transcript, Vol.2, P. 172, Lines 12,13) She continued saying that none of the following options offered by the XX District School Board were appropriate for XY:

- a) Remain at Public School A in the current classroom with students from grades six to eight.
- b) Accept the categorical placement at Secondary School A where XY would be in a class of one (the child).
- c) Accept the timetable developed by the principal at Secondary School A, where XY would be taking regular grade nine classes with grade ten Latin and English, and would receive Special Education Resource Teacher (SERT) support for the other subjects (regular class placement with SERT support).

Respondent's Position

The XX District School Board's IPRC found that a categorical grade nine placement would be appropriate for XY, based on a review of XY's strengths and needs. In a categorical placement, "*an alternative or modified curriculum is designed to meet the student's needs while the student continues to engage in regular class activities where appropriate.*" (Transcript, Vol.2, P. 180, Lines 22-25) At the time of the IPRC, XY was in a congregated self-contained gifted class at Elementary School A. Under the Board's approach to Special Education, secondary level students attend their home secondary school, so in XY's case, that would be Secondary School A. The program for XY would have meant enhancement of some grade nine subjects, and compacting the grade nine/ten Mathematics. It meant taking grade ten English, and enrolment in Extended French classes for grade nine Geography. It included grade ten Latin, and enrichment activities, and extension in independent study opportunities. XY would have the support of Special Education Resource Teachers (SERTS), direct or consultative, for more than fifty percent of the day.

It is the Board's position that the same categorical placement was also made available as an alternative at Secondary School C, where a clustering of groups of six to eight gifted students would occur in core subjects.

Appellant's Witnesses

- **Ms. A** Ms. A is the Vice-Chair of the Special Education Advisory Committee (SEAC) for the XX District School Board. She is the representative for the Association for Bright Children (ABC), and is also ABC representative for the Provincial Special Education Advisory Committee. [Advisory Council on Special Education] Ms. A read correspondence written from ABC to the Director of the XX District School Board requesting that congregated gifted classes in secondary schools be implemented for the school year 2000/2001. She stated that ABC is still concerned about a lack of a range of placement options for gifted students. Ms. A stated that the term categorical placement first appeared in the Board's Special Education Review [Special Education Plan] that was submitted to the Ministry in May of 1999. Prior to that she contended, that in 1998, XX District School Board began [changing their Special Education Plan] by

substituting the term 'programs' for 'placement' in their review of the Special Education Plan.

Ms. Y questioned Ms. A regarding the Minority Report of the ABC dated April 19, 1999, which was sent along with the Revised Special Education Plan to the District Office of the Ministry of Education. This report did not support the Special Education Plan, because ABC felt that the Board did not offer a full range of placement options for its exceptional students.

She testified that gifted students in regular classes would have the same access to modifications, (enrichment, acceleration etc.) as gifted students in the categorical placement. When questioned as to the difference between a categorical placement and an elementary gifted class placement, she identified the lack of intellectual peers, and the pace of delivery of program, as the two most important factors. Further she stated, that students in the categorical placement in the secondary school receive special education support, direct support, and/or consultative support for more than half of their school day.

Ms. Y introduced statistical information from the Ministry of Education, and asked Ms. A to compare numbers of gifted classes in the XX District School Board, the ZZ District School Board, and the ZZ Catholic District School Board. In doing so, Ms. A showed that there were no reported congregated gifted classes in secondary schools in the XX District School Board in 1998, and in 1999 five students were reported in secondary gifted classes, whereas, both the ZZ District School Board and the ZZ Catholic District School Board reported special education classes for gifted students.

Under cross-examination by Ms. Bowlby, Ms. A agreed that she was appearing at the request of Ms. Y, and not as a representative of SEAC. She has been a member of SEAC since 1999, and was not involved with the development of the XX District School Board Special Education Plan before that time. Ms. A indicated "*the association she represents endorses a full range of placement options at the secondary and elementary levels.*" (Transcript, Vol. 3, P. 299, Lines 21-24)

Ms. Bowlby asked Ms. A about the differences between a categorical placement and a regular placement. Ms. A stated that she has never been able to hear an answer about where a categorical placement is. She said “*she was told that it was a class within a class, or a clustering*”. She further stated that “*this is a problem for her, and it is a problem for the children that she represents, in that they do not know where their class is.*” (Transcript, Vol. 3, P. 312-313)

Ms. Bowlby requested that Ms. A’s testimony be disregarded, as she was not qualified as an expert witness, and she was expressing her opinion. The Tribunal determined that Ms. A, in her position with ABC, had a basic knowledge of gifted education, and could respond to questions regarding giftedness, and that the information would be weighted accordingly. When questioned as to whether some children could be gifted in only certain areas, Ms. A replied, “*No.*” However, she did agree that in some subject areas, some gifted students excel while others may not, and that those subjects might differ from student to student.

Referring to the statistical documents from the Ministry of Education, Ms. A stated that, although she received documents for the whole province, she had only provided this Tribunal with those documents pertaining to the XX District School Board, the ZZ District School Board, and the ZZ Catholic District School Board. When asked if the XX Catholic District School Board and the WW District School Board had secondary gifted classes, Ms. A replied that they did not.

• **Ms. Y**

Ms. Y is the mother of XY and is both presenting the case and serving as a witness. She began by describing the placement XY is currently in with the ZZ District School Board. She stated XY is in “*self-contained classes for a portion of the day with gifted students and high achievers, and then other portions of the day .. .to take other courses but with regular students in regular classroom settings.*” (Transcript, Vol. 4, P. 390, Lines 10-13) She described the successful year XY has had at Secondary School B. At the end of grade nine the child had two more credits than an average grade nine student, the child was on the honour role, and had been involved with extra curricular

activities, in particular, the Ontario Drama Program. Over the summer the child had been cited for [the child's] honesty, in returning a wallet that the child found to its owner. She described the child's present grade ten year indicating that the child is carrying nine credits, and the child will be doing [the child;s] grade eleven Chemistry, taking gifted English, Mathematics, French and German. Ms. Y described XY as a bright child. The child did have a problem in the early years with handwriting, due to poor small muscle coordination, which she described as dysgraphia. This problem slowed the child's speed of writing, but when the child learned to type and to use a computer in grade eight, the problem was greatly alleviated.

XY was in French Immersion for grades four, five, and six. When the child moved to Municipality A the child was in a regular English program for grade seven. The principal of the school suggested that XY be tested. Achievement testing was completed in January 1999 with results showing that XY is in the very superior range, with basic skills reported as being comparable to that of an average individual at grade equivalent of grade twelve, one month. The Wechsler Intelligence Scale for Children-Third Edition (WISC-111) was administered in March 1999 by Dr. G. Results indicated XY was in the very superior range of intellectual functioning. The report stated that the child's (XY) overall reasoning abilities exceed those of approximately 99% of children the child's age. XY was then identified as gifted, and the child was sent to the gifted class at Elementary School A for grade eight. Ms. Y described XY as a 'big child' who was over six feet tall weighing two hundred and twenty pounds when the child graduated from grade eight. The child enjoyed the program at Elementary School A, and especially enjoyed [the child's] teacher, Mr. B.

In March, 2000 the Special Needs Committee of the XX District School Board recommended a grade nine placement. Ms. Y then met with Ms. C, the principal of Secondary School A, and discussed options that might be available for XY. The timetable was presented to Ms. Y for her consideration. (Exhibit 40) Ms. Y was disappointed when she realized that the categorical class for grade nine was not a congregated gifted class. In her opinion, there was no difference between the program for a gifted child in a regular class, and a gifted child in a categorical class. When Ms. Y wouldn't accept the placement offered by the XX District School Board, she enrolled

the child in a gifted program at Secondary School B in the ZZ District School Board.

Ms. Y later received a letter from Ms. F (Exhibit 31) dated November 27, 2000, offering XY a categorical placement at Secondary School C, where there was a cluster of seven grade nine gifted students. Ms. Y found the program to be unacceptable because she was seeking a 'stay of placement' until the matter could be resolved. She believed that the stay of placement required a gifted class placement. (Exhibit 32) Ms. Y stated that aside from the question of poor timing, and the necessity of moving from a non-semestered to a semestered system, *"the point is, that the program was not arranged for XY in any way. It still wasn't a gifted program."* (Transcript, Vol. 4, P. 440, Lines 2-7)

Ms. Y introduced a brochure describing the programs for gifted students in the ZZ District School Board (Exhibit 33). She also presented the Secondary School B Grade 9 Course Calendar, 2001/2002 where the gifted program was listed. (Exhibit 34) The calendar stated that the gifted program at Secondary School B has a structure and content distinct from the academic program offered to students in regular classes. Ms. Y

stated that if the XX DSB *"had a program equivalent to what he [XY] is doing now, I'd move the child in a second."* (Transcript, Vol. 4, P. 469, Lines 3-5)

Ms. Bowlby cross-examined Ms. Y about her expectations of XY. She answered that XY came from a family that has always excelled. She also stated that one of the reasons she did not sign XY's Individual Education Plan (IEP) was because it indicated that the child was being taught at the grade eight level. When Ms. Bowlby asked Ms. Y if she expected XY to be taught at the grade nine level, Ms. Y said that she expected her child to be taught at the level the child was capable of learning. In reference to the psychiatric report that was entered into evidence (Exhibit 3) Ms. Y, admitted that Dr. H had met XY only once, one week before the report was sent. Ms. Y also admitted that she told the doctor that she wanted XY to remain in the program at Secondary School B, and that she wanted the XX District School Board to pay for the child's transportation. These were the two recommendations made by Dr. H in his report. Ms. Y said that she asked for Dr. H's opinion based on the information that she provided.

Respondent's Witnesses

• **Mr. B** Mr. B is presently a teacher of a regular grade seven class in the XX District School Board. During the 1999/2000 school year, Mr. B was XY's teacher of the gifted program. There were nineteen students in the grade seven and eight class, all of whom had been identified as gifted. Mr. B described XY as enthusiastic, friendly, and serious about [the child's] work; responsible, with excellent work habits and motivation. As the year progressed, XY made friends within and outside the classroom. XY played some roles in plays and, compared to others in the class stood out as an excellent student. With respect to XY's attitude towards [the child's] grades, XY wanted to achieve high marks, and the child was pleased when [the child] achieved high marks, and not pleased when [the child;s] marks fell below those expectations. Mr. B reviewed XY's report card in which XY achieved straight A's, and was in the upper quarter of the class. Mr. B stated that he does not support a congregated placement for gifted students at the secondary level, and that in his eleven years as a teacher of gifted students, all his gifted students went into the regular high school program with special education supports. Mr. B was confident that XY would be successful in a regular high school setting. He believes that the categorical placement that was being offered at Secondary School A would suit XY's strengths. He stated that he had "*every confidence that XY's abilities, the child's exemplary attitude, the child's love of learning, responsible attitude, the child's enthusiasm....., pointed to success in a regular high school setting.*"(Transcript, Vol.4, P.487, Lines 15-21)

In response to cross-examination by Ms. Y, Mr. B stated the [Board] had two options with respect to possible placements in the secondary school for XY; these included a regular class placement or a categorical placement. The categorical placement was a new placement that was under development - a placement that allowed accommodations to be made at the high school that would help meet the strengths and needs of the student. As well, XY could go into the regular class. There was no option of a gifted, congregated high school class. Mr. B concluded that he thought XY would be successful wherever the child went. Ms. Y then asked if XY would "*do better if gifted programming were available*". Mr. B stated that opportunities are important to everyone's success, but as to whether XY needs them [gifted programming] to meet

success, Mr. B stated that he didn't believe that the child [XY] needs them.

- **Ms. C**

Ms. C is currently seconded as an Education Officer with the Ministry of Education, and was principal of Secondary School A from 1995 to June 2000. Ms. C described the examples of program opportunities for XY within the categorical placement. Ms. C described how Secondary School A has a tradition of meeting the needs of gifted students; it has an extended French program, and is internationally known for its music program. It has a drama program to complement the music program.

Ms. C indicated that she had two or three meetings with Ms. Y and several telephone conversations to discuss timetable options. On June 28, 2000 the school produced a timetable for XY which included grade ten Latin, grade ten English and grade nine Mathematics. XY would use a computerized mathematics program called the "learning equation" for compacting the Mathematics course either through the mathematics classroom, the mathematics teacher or working with a Special Education Resource Teacher (SERT). It also included two courses in extended French and Geography, which would give the child a strong academic peer group, and a grade nine Science. XY would have an opportunity to have extensions to the curriculum, enrichment activities, and alternative independent study projects in response to the child's interests in Science.

Ms. C discussed the extra-curricular activities available at the school as listed in Exhibit 41 -"Secondary School A Enrichment Opportunities". Ms. C described the difference between a regular class placement and a categorical placement: "*the regular class placement for grade nine where courses are offered at academic or applied or essential skills. Categorical placement, of course, focuses on the student's IEP in response to the student's strengths and needs.*" (Transcript, Vol.5, P. 523, Line 23)

Ms. C indicated that there was a discussion about purchasing "Dream Writer" for assistance with XY's dysgraphia, and mentioned that Secondary School A had three full time SERTS, and had advertised for a full-time SERT for gifted students.

Subsequently the Board hired a consultant for the gifted for the district rather than a SERT for the gifted at Secondary School A. Ms. C stated that she believed that with the expertise of the staff, and the willingness of the school to be flexible to individualize the program for XY, that they had a product that would allow XY to be successful. She believed that a segregated program would not be better for XY.

In response to cross-examination by Ms. Y, Ms. C described the history of Secondary School A, and stated that at one time the Board had more flexible school boundaries, and students could choose where they wanted to attend secondary school. With the increase in population in Municipality A, the Board made a policy decision that students would attend their home schools.

In reference to the categorical placement in the Special Education Plan, Ms. Y questioned Ms. C on each example of the enrichment opportunities provided for the categorical placement, to determine whether all of the these opportunities were available to any child in the regular program. Ms. C responded that every one of the enrichment opportunities at Secondary School A was available to any child who applied for it, if the child met the grade level requirement and had the ability to be successful.

Ms. C stated that all the courses that had been planned for XY in the categorical placement would be available for any student who had a gifted identification and was in a regular class placement. It was determined that there were thirty-nine students identified as gifted who were spread over five grades at Secondary School A. In grade nine there was one other student besides XY who was identified as gifted. XY would have been the only student whose program was in a categorical gifted placement.

It was confirmed by Ms. C, that Ms. Y wanted a gifted secondary congregated program for XY.

Under re-examination of Ms. C, Ms. Bowlby asked Ms. C to describe the difference between a categorical placement for a gifted student and the opportunities that were available for a gifted student in a regular class. Ms. C responded that *“students in a categorical program for gifted would have more than fifty percent of their time modified while placed in a regular class.”* (Transcript, Vol. 5, P. 577)

- **Ms. D**

Ms. D is now retired, but was the Special Education Secondary School Consultant when the decisions were being made for XY. Ms. D was involved in producing Exhibit #44, Gifted Resources for Secondary Schools, December 1999. These documents described program extensions and alternative curriculum ideas for gifted students in the secondary schools in XX District School Board. As well, she testified that the new Ontario Curriculum does include thinking and inquiry skills in all curriculum documents.

From Ms. D's perspective, gifted students are not a homogenous group, but have different strengths, needs and characteristics. She stated that it was not true that the only peer of a gifted student is another gifted student.

Ms. D described the in-service that she provided to special education secondary school staff in the spring of 2001. The term 'categorical placement' was discussed and described in a document produced for this in-service. The document indicated that more than fifty-one percent of the grade level curriculum would be modified to meet the needs of the student in a categorical placement. The document shows how to mix the alternative curriculum expectations to provide a categorical placement for the student. Ms. D described the document as a resource for teachers to provide an example of best practices for programming for all gifted students, whether the students are in a regular class or a categorical placement. (Exhibit #45) She also described the Learning Strategies Course (GLE) that is linked to the student's IEP and is available to students in the categorical placement.

Ms. D described Secondary School C programming for gifted students. She stated that at Secondary School C, gifted students are clustered; the school uses the GLE as an autonomous learner program, as well as offering modifications in the courses where the students are clustered. Clustering is dependant on numbers, and sometimes if there are small numbers in one grade there is cross grade grouping. She indicated that in the last five years, there has been clustering of gifted students at Secondary School C. Under cross-examination, Ms. D stated that any child identified as gifted could be given the autonomous learning course (Learning Strategies – GLE).

- **Dr. E** Dr. E is an expert witness for the XX District School Board and has a Ph.D. in Special Education from the Ontario Institute for Studies in Education (OISE). Her doctoral thesis was a research study looking at domains of development with gifted learners to determine if there are domains of giftedness, such as mathematics and not in others for an individual gifted child. She is a lecturer in gifted education at OISE, and has held a number of research fellowships, scholarships, and appointments in the area of giftedness. She has written papers that have been published in a number of refereed journals. She has worked as a consultant with the XX District School Board in the development of the Board's approach for special education of gifted students.

Dr. E defined her belief about giftedness as "*exceptionally high level development in one subject or another such that without some kind of curriculum modification, learning will not happen or minimal learning will happen. It [giftedness] is exceptional ability in one area or another that requires some kind of educational adaptation.*" (Transcript, Vol.5,

P. 615, Lines 3-5, 13-17) She explained that the The Wechsler Intelligence Scale for Children, Third Edition (WISC 111) was originally conceived as a way to address children's learning problems, but is not a meaningful measure of intelligence. She went on to state that a high IQ score does not tell you enough about how a child learns. You can learn a lot more by clinical observations, by classroom observations, and by academic achievement testing.

Dr. E stated that the peers of a gifted child in grade nine are the "*peers of other kids who are in grade nine*" and went on to say that there is much more to early adolescent development that is not about cognition. (Transcript, Vol. 5, P. 620, Lines 12,13) "*So, again, in my experience, it is a very artificial and not [a] practical and useful idea to identify kids as having a high IQ [Intelligence Quotient], and pull them together and separate [them] from others. It doesn't make any logical sense.*" (Transcript Vol. 5, P. 621, Lines 8-12)

In Dr. E's opinion the best approach to providing education for gifted students at the secondary level would be "*for a child to have a range of possible options and to be helped to select*" from a range of possibilities. She believes that a regular class with

modifications to curriculum and appropriate supports provide the best placement for gifted students. *“A big benefit to this approach is the absence of a label, and the big social and emotional costs to the label.”* (Transcript, Vol. 5, P. 623-624) She said that the learning process can happen successfully in a regular classroom for a vast majority of kids who are exceptional. She went on to say that the only reason we would put a child in a full time gifted classroom is if the child is unable to be successful with adaptations to the regular classroom. There are circumstances where the only good support for exceptional learning is a full time classroom, but *“only when the regular teachers don’t have the knowledge and the support to deliver intelligent adaptation.”* (Transcript, Vol. 5, P. 626)

Ms. Bowlby presented a hypothetical profile to Dr. E. In response Dr. E indicated that a categorical placement would be *“perfect”* for the student profile just described [XY’s profile].

Dr. E also stated under cross-examination that there are research findings, including doctoral theses that find many benefits from congregated programming. When asked by Ms. Y if there is one way that is better [in respect to placement of gifted students], Dr. E responded that with respect to placement that it is always good to look at as many placement options *“as one can conceive”* since every child is unique. (Transcript, Vol.5, P.641, Lines 13,14) Ms. Y asked Dr. E if there was a difference between chronological peers and intellectual peers. Dr. E stated that *“kids who are exceptional relative to their age peers in the way they think about things, can feel very, very different than their age peers. So they have problems interacting with their age peers if there isn’t also an intellectual match.”* (Transcript, Vol. 5, P. 640, Lines 12-17) Dr. E talked *“of a mismatch where the child’s ability to learn and understand are seriously mismatched with the programming that’s provided. That kid needs something.”*(Transcript, Vol. 5, P. 642, Lines 2-7)

Dr. E replied in the negative when asked under re-examination, if the fact that she was a paid consultant to the XX District School Board would have influenced her testimony.

• Ms. F

Ms. F is the Superintendent of Student Services for the XX District School Board and assumed that position in February 1999. The XX District School Board has fifty-six thousand students of whom five thousand are identified as exceptional. Ms. F testified that there are no gifted segregated classes at the secondary level in the Board. Prior to the destreaming of grade nine, there was a congregated class of elementary gifted students who went to Secondary School A and those students usually continued at Secondary School A as a cluster group of gifted students.

Ms. F described the review of gifted programs that the Board conducted in 1998. She stated that the most important recommendation that came from this review report was the one that secondary school gifted programming in the Board continue to be delivered in each home secondary school. This decision was made due to increasing enrollment throughout the county. Following this review the categorical placement was developed.

She described the timetables for clusters of gifted students in grades nine and ten at Secondary School C. The timetable included English, French, Mathematics, History and Science which were at the enriched level.

She also described the in-service for staff where Dr. E was in attendance. This was a three day in-service for special education staff, teachers and administration.

In response to questions by Ms. Bowlby, Ms. F described the process regarding the appeal of XY's placement, and the acceptance of the Appeal Board's decision by the XX District School Board on July 19, 2000. Ms. F wrote a letter to Ms. Y dated July 24, 2000 (Exhibit 5) in which Ms. F described Ms. Y's rights following the Appeal Board's recommendation, and the subsequent acceptance of the Appeal Board's recommendation by the XX District School Board. In the letter Ms. F stated "We propose the following options:

- 1 *If we are able to find a SERT for Secondary School A, (we are currently advertising), XY could be placed in a gifted congregated class (consisting of one student-XY) to receive a Grade 9 gifted program with that SERT.*
- 2 *XY may be temporarily placed in the program the student has selected at Secondary School A in which case the student would proceed to take the courses the student has selected.*

(Exhibit 5, Tab 4)

Ms. F went on to say that if there were other options that the parents would like the Board to consider, then Ms. Y was to let her know. Ms. F stated that Option I was only available if they were able to hire a SERT, and that there would be no one at the Board available to deal with this matter until August 21, 2000.

The letter of August 29, 2000, from Ms. I, Director of Education to Ms. Y (Exhibit 29), stated that *“in accordance with the Board’s understanding of a “stay of placement”, the Board was required to continue XY’s placement at Elementary School A.* The Board therefore arranged with the principal at Secondary School A to send a secondary school teacher to Elementary School A ready to teach XY and to deliver the program on the first day of school. The teacher went to the school on the first day, but XY was not in attendance. On September 5, 2000, Ms. Y informed the XX District School Board, that she had enrolled XY in another school board.

Ms. F stated that she believes that XY’s needs can best be met by the categorical placement, and that this would be the appropriate placement for XY.

In response to cross-examination by Ms. Y, Ms. F stated that after destreaming of grade nine in 1996/97, children were no longer clustered, but instead were sent to their home schools. In regard to the in-service and qualifications of teachers, Ms. F responded that she was unable to report on how many teachers in special education roles have the gifted option, but they all have a minimum of Special Education, Part 1.

Ms. F explained the difference between a categorical placement and a regular class placement with SERT support. She said, *“Categorical placement is a more intensive Special Education support. Students in the categorical placement require more than 51% of their day supported either directly or indirectly. Examples for direct support may be educational assistance support or adaptive technology or modifications to program or alternate curricula and those students could also, it could also mean indirect support to the teacher.”*(Transcript, Vol.6, P. 686, lines 10-17)

During cross-examination Ms. F indicated that on June 28, 2000, she did not know the

number of gifted students who would be attending Secondary School C in September 2000. She did not give Ms. Y the Secondary School C option, where there was clustering of gifted students, until this option was presented to Ms. Y in a letter of November 27, 2000. The attachment to the letter indicated that there was a group of students at the grade nine level identified as gifted. When the letter was received by Ms. Y, XY had been in the York County DSB since September, 2000.

Ms. Y established through cross-examination, that she (Ms. Y) did not consent to the change of placement from a gifted congregated program to the categorical placement. Ms. F couldn't give the numbers of gifted students in a categorical placement in grade nine nor could she recall the number of gifted children who graduated from grade eight [within the Board's jurisdiction] in the school year in which XY graduated from grade eight. She did state that there were thirteen gifted students going into grade nine from Elementary School A. Ms. F also explained that she was unable to answer a series of questions about the amount of support that XY would receive in the child's grade nine placement because that is usually worked out at the school with school staff.

In reference to the review report, The Report of the Secondary School Gifted Program (Exhibit 48), the Tribunal asked about Recommendation 1, which read:

“Small secondary schools, and/or schools with a small number of identified gifted students, should be expected to partner with a neighboring secondary school for the provision of gifted programming for individual identified students when required. Transportation will be the responsibility of the Board in such cases.”

Ms. F responded that this recommendation has not been fully implemented and that there is still some work to do in this area.

The Tribunal asked for the origin of the term 'categorical placement' to which Ms.F responded that the term has been problematic for both school staff and for parents to understand. The Board has since moved to using *“regular class and special education support”* and *“regular class with intensive special education support.”*

It was reaffirmed that XY would have been the only student in the categorical gifted placement at Secondary School A, and that many of the gifted students at

Secondary School A had the designation of regular class with special education support.

Closing Statement by Ms. Y

Ms. Y began by reviewing the process that occurred that had caused her to bring this case to a Tribunal hearing. It is her contention that on April 27, 2000, the IPRC changed XY's placement from a gifted class placement to a categorical class placement - gifted. The IPRC did not have parental consent. She claims there is not a full range of placement options for students identified as gifted who would be attending secondary schools in XX District School Board. She stated that XY had a successful year in the grade eight gifted program at Elementary School A and graduated at the top of the class. This indicated to Ms. Y that this type of program would be appropriate for the child in the secondary school placement.

Ms. Y stated that Secondary School A's program as outlined by Ms. C, principal of the school, was not what XY needed. Ms. Y continued by outlining the credits that XY would have missed had the student attended Secondary School A instead of Secondary School B in ZZ District School Board.

In response to the testimony of the Board's expert witness, Dr.E, Ms. Y stated that *"the key to her argument was that appropriate supports and resources be in place and each child be treated as a unique case, with the emphasis on unique"*. (Transcript, Vol.6, P. 746, Lines 23-25)

Ms. Y confirmed that XY needs an intellectual peer group consistent with a class of gifted students.

The remedy that she seeks is that the *"XX District School Board provide a gifted secondary congregated placement part time, as close as possible to the format and structure of the program he is currently attending in ZZ District School Board."* (Transcript, Vol. 6, P.750, Lines 12-18)

Closing Statement by Ms. Bowlby

Ms. Bowlby stated that the XX District School Board's position is that the appeal should be dismissed and that the Special Education Tribunal should confirm XY's placement in a categorical placement now called regular class placement with intensive support. *"The Board has indicated its commitment to provide such a placement to XY, either at XY's home school, Secondary School A, or at Secondary School C where the opportunity to participate in clusters is available."*

(Transcript, Vol.6, P.758, Lines 4-12)

Ms. Bowlby reviewed three legal principles that should be used. The first was the standard against which she said the appeal should be measured. In this regard, Ms. Bowlby quoted Section 8 (3) of the Education Act where *"the Minister shall provide parents with the opportunity to appeal the appropriateness of the Special Education placement"*. The second principle is onus, which is on the parents to establish that the placement which is appealed is not appropriate, or is not suitable. The third legal principle that Ms. Bowlby reviewed is the principle of presumption. She explained that the presumption regarding placement, is embedded in the legislation, and is the concept that Special Education in Ontario begins in the regular class, and an exceptional pupil is to be placed in a regular class unless the pupil's exceptionalities and needs require the pupil be removed in order to receive assistance, or to have the pupil's special needs addressed so that the pupil can go back to the regular class.

All the witnesses for the Board stated that XY would be successful in a categorical placement, and Mr. B stated that XY could be successful in either a categorical placement or a regular class. Ms. Bowlby stated that Dr. E believes that the regular class is the very best placement for a gifted student, and that the categorical placement, compared to a segregated gifted class, offers a whole lot more flexibility. Ms. Bowlby said if XY can be successful in the regular class, then the child should be in a regular class. If the child can't be successful in the regular class, then the child should be withdrawn to the point where the child can be successful. The position of the Board is that XY can be successful in the regular class.

XY did well academically before the child was identified as gifted. All the Board's witnesses stated that gifted students do not need to be placed [in a special education program] in order to learn or to be successful. She stated that there is no reason to believe that XY wouldn't receive an equally rich program whether the child attended Secondary School A or Secondary School C.

In reviewing the parent's position, Ms. Bowlby referred to the letter of April 18, 2001 in which Ms. Y is seeking to have a continuation of a full time self-contained class. Ms. Bowlby suggested that Ms. Y is really seeking to have XY continue to attend Secondary School B and for the Board to pay for [the child's] transportation.

Ms. Bowlby noted that we don't have a lot of evidence about the Secondary School B placement. It was not subjected to the scrutiny of the categorical placement of the XX District School Board, the placement that Dr. E described as "perfect" for XY.

In summary, Ms. Bowlby quoted from the Special Education Appeal Board majority decision, which stated that Secondary School A should enable XY to meet the child's academic and social needs. From a practical perspective, since Secondary School A is the child's neighborhood school, it would allow the child to participate easily, if the child wishes, in the outside of class milieu [extra-curricular activities], so crucial to normal adolescent development. In conclusion, Ms. Bowlby stated that the categorical placement would best meet XY's emotional, academic and social needs, and she asked that the Tribunal dismiss the appeal.

Rebuttal by Ms. Y

Ms. Y reminded the Tribunal that the XX District School Board had identified XY as gifted because the regular class did not meet the child's needs. Ms. Y stated that "*she was talked into it because this placement would meet the child's needs and that her 'duck out of water' would be better in a gifted program.*" (Transcript, Vol.6, P.796, Lines 5-11)

Ms. Y stated that some gifted children don't excel in regular classes, although some do, but they do not excel as far as they can possibly go, which was one of the reasons that

XY was placed in the gifted class at Elementary School A. XY had the potential and the child needed the diversity and depth and breadth of the curriculum. Ms. Y continued, that her understanding is the XX District School Board does not have a continuum of placements. It only has the regular class placement and the regular class categorical placement. Neither of these would meet XY's needs.

Note:

Ms. Y waived her earlier request to enter any information that may be forthcoming from the Information Privacy Commission (IPC) appeal, in order to expedite the decision of the Tribunal.

Issues and Reasons

The Tribunal identified three issues that were brought forward during the hearing.

Issue 1: Stay of Placement Regulation 181/98, section 35, requires a 'stay of placement' for a child if the parents appeal the IPRC decision regarding placement. The parents did appeal XY's placement, after the IPRC of April 2000 changed XY's self-contained gifted placement in grade eight, to a categorical placement in grade nine.

We accept Ms. Y's assertion that a change of placement was offered to XY at Secondary School A. It was the policy of the XX District School Board to have secondary students attend their home school, but there were only two students identified as gifted in the grade nine class at Secondary School A. There was not a significant group of identified peers with whom XY could interact at Secondary School A. It was noted that the majority of XY's gifted classmates at Elementary School A went to a clustered program at Secondary School C for grade nine.

The stay of placement options that were offered to the parents for XY included:

- remain at Elementary School A in the current classroom with students from grades six to eight with support
- accept the categorical placement at Secondary School A where XY would be in a class of one (the child)
- accept the timetable developed by the principal at Secondary School A where

XY would be taking regular grade nine classes with grade ten Latin and English and extended French and Geography, and would receive SERT support for the other subjects (regular class placement with SERT support)

The Tribunal recognizes that the stay of placement provision is problematic when a student moves from an elementary school to a secondary school. However, it is not necessary for the Tribunal to make a decision about what the stay of placement should have been. The Tribunal does believe that the parent was not given viable options from which to choose, when XY was ready to move from elementary school to secondary school. In our opinion, each of the options proved inappropriate for the following reasons:

- First, the placement at Elementary School A was not an appropriate 'stay of placement' because XY was older than the other students and was much larger at six feet two inches, two hundred twenty pounds at age thirteen years, nine months. Although the XX District School Board planned on providing a grade nine program for XY at Elementary School A, a grade nine program for one grade nine student in a grade six to eight class is not an appropriate program for a gifted grade nine student.
- Secondly, the categorical class placement had only one student, and this was XY. This is not a viable option for a gifted student who needs the opportunity to learn and interact with intellectual peers.
- Thirdly, the regular grade nine class placement also was not appropriate. The XX District School Board had just identified XY as gifted, and in the previous year had recommended a congregated gifted placement, as the principal thought that XY was like a 'duck out of water'. XY had excelled in the gifted setting and needed the opportunity to continue to excel in a gifted setting.
- This last option was presented to the parents in the letter of November 27, 2000. A gifted placement at Secondary School C, where several gifted students were clustered was offered. This offer was too late for practical consideration in the child's grade nine year. The evidence showed that XY was already enrolled in a non-semestered program at Secondary School B in ZZ District School Board, and the program at Secondary School C was semestered. However, the Tribunal believes that a timely transition could have been made at the beginning of grade ten, and that the program at Secondary School C had the potential to meet the child's needs as a gifted learner.

Issue 2: Is there a difference in XY's achievement levels when the child was in a regular class versus in a gifted class placement?

This particular point is disputed between the parties. The testimony presented by Mr. B indicated that XY was achieving success in academic subjects prior to the identification and placement in a gifted class for grade eight. The report cards, including grade seven, also showed that XY was making satisfactory progress. It was during the child's grade seven year that the principal spent time with the child, and said that XY was a 'duck out of water' in the regular grade seven class. During this year, XY was tested at the recommendation of the school. Results in both the academic and intellectual assessments placed XY in the very superior level.

XY was then identified as gifted and placed in a gifted program. Once the child entered the grade eight gifted program there was a significant difference in the child's achievement level throughout the child's grade eight year and the child's year in grade nine. This high achievement continued in grade nine in the gifted program at Secondary School B in the ZZ District School Board. XY achieved at the top of the child's class, and was able to assume roles in drama for which the child received acclaim.

The report cards also indicated that XY had difficulty with relationships with other students in the child's classes. The Special Education Appeal Report, indicated that XY's parents reported that XY had difficulty fitting in, and was bullied by other children through the child's social experiences until the end of grade seven. The child's reports for both the grade eight year and grade nine indicated that these issues were no longer evidenced in the behaviour XY was exhibiting. The child's interpersonal skills improved, and XY was now able to resolve independently most interpersonal issues with classmates. Dr. E's testimony provides some rationale for these difficulties that XY experienced before being placed in a gifted program. We agree with her testimony that students who are exceptional, and who think about things differently, may have problems interacting with their age peers if there isn't an intellectual match.

The evidence demonstrated that although XY was **successful** prior to the gifted identification and placement, the child **excelled** at [the child's] level in the gifted placement. The Tribunal believes that XY needs a gifted program that will help the child continue to reach the level of intellectual potential that the child has reached in

congregated and partial congregated programs. A congregated program with gifted peers, with classes in core subjects conducted by teachers with subject expertise, and an understanding of the needs and nature of gifted students is necessary for XY to achieve at the child's level of potential.

Issue 3: Is the categorical placement – gifted, a viable option that will meet XY's needs?

The Board's IPRC decision to place XY in a categorical placement is at issue. The Board contends that the categorical placement offers flexibility in timetabling to meet the needs of exceptional students. The Board's witnesses all indicated that XY would be successful in the categorical program, and Dr. E stated that she believes that the regular class is the very best placement for a gifted student. The categorical placement, in her view, compared to a segregated gifted class, offers a whole lot more flexibility.

The appellant contended that the categorical placement is no different for a gifted student than a categorical placement that could be offered to any student. This is not a viable option for a gifted student who needs the opportunity to learn and interact with intellectual peers. Furthermore, it is the opinion of the Tribunal that the offer of a categorical placement proposed for one student at Secondary School A, was very inappropriate and would not meet XY needs.

The appellant demonstrated the possibilities for depth and breadth of curriculum in the Secondary School B placement, compared to the categorical placement at Secondary School A. In addition, the testimony of Ms. C, principal of Secondary School A, did not convince the Tribunal that the placement was designed to meet XY's needs as those needs had been met in the grade eight congregated gifted class.

The Tribunal acknowledges Ms. Bowlby's comments that the program at Secondary School B did not receive the scrutiny that the categorical program at Secondary School A received in this hearing. Nevertheless, the course calendar from Secondary School B, a public document does state:

“The gifted program at Secondary School B has a structure and content distinct from that academic program offered to students in regular classes. Essential features of this program include: a core of academic subjects offered at a gifted level – English, Mathematics, Science, Geography, History and French.”

On examination of the program at Secondary School C, grade nine and ten core subjects are offered at an enriched level for identified gifted students, and other students who must apply to take these classes. We know that in the child’s grade ten year, XY would have been in a cluster of gifted students that varied in size from three to fifteen students, with an average group size of eight. (Exhibit 49) This is not unlike the program that XY is currently taking at Secondary School B, where core subjects are offered at the gifted level, and non-identified students may apply to take those courses. Given that there is no way to differentiate between a gifted and an enriched course, the Tribunal assumes that both programs (in the above two schools) were designed to meet the needs of gifted students.

Based on the evidence, the Special Education Tribunal believes that a gifted program similar to the one at Secondary School B where XY is meeting the child’s potential, could be offered at Secondary School C. The letter that Ms. F wrote to Ms. Y on November 27, 2000, in fact indicated that there were a number of gifted students at Secondary School C who were congregated in several subjects. Clearly, Secondary School C has a cluster of gifted students at XY’s grade level and age level, and currently offers enrichment level courses.

The evidence showed that the XX District School Board did not have a congregated gifted program at the secondary level for its gifted students. In the review of program for gifted (Report of The Secondary School Gifted Program Review) Recommendations, recommendation number one stated “ *that where there were insufficient numbers of gifted students in any one school, that secondary school personnel work together to group the gifted students at one school, so that there could be a congregated group for programming purposes.*” Ms. F stated in her testimony that this recommendation has not yet been implemented, but if it were, then a program for congregated gifted students could be operable in the XX District School Board. The XX

District School Board has a sufficient number of students within the Board to offer a range of placement options for gifted students, including a congregated option for those students who need this placement when this option is the parent's preference.

Based on the evidence it would seem that the XX District School Board already has a placement for XY that could meet its needs, at Secondary School C. Recommendation #1 in The Report of The Secondary School Gifted Program Review clearly indicated that gifted students could be congregated in neighboring schools, or congregated programming could be offered in several schools, accommodating those highly gifted students, who need differentiated programming from the regular school program.

The Tribunal believes that XY needs a gifted program that will help the child reach the level of intellectual potential that the child has reached in the congregated gifted programs. The Tribunal believes that gifted students at the secondary level need a rigorous and challenging intellectual program, and the opportunity to learn with intellectual peers. The Tribunal was not convinced that the categorical placement as it was presented, would provide either of these components.

Decision

The Tribunal orders that the XX District School Board provide XY a placement in a gifted congregated (clustered) program.

Recommendations

In conjunction with the placement order, the Tribunal makes the following recommendations:

1. That Recommendation #1 in The Report of The Secondary School Gifted Program Review, be implemented and publicized to all staff, with operationalized procedures developed, so that it is clear to elementary and secondary principals that secondary schools may work together to provide gifted programming where there are small numbers of gifted students in a secondary school. This Recommendation read:

“Small secondary schools, and/or schools with a small number of identified gifted students, should be expected to partner with a neighboring secondary

school for the provision of gifted programming for individual identified students when required. Transportation will be the responsibility of the Board in such cases.”

1. The term “categorical” should be addressed. The Tribunal recommends that the Board change the name to more clearly reflect the intent or purpose of the placement. Throughout the hearing there appeared to be much confusion and misunderstanding about what type of placement this really was. Parents, teachers, and Tribunal members involved in this case found the term confusing.
2. That the Special Education Resource Teacher responsible for gifted students at Secondary School C, along with other appropriate personnel, meet with XY and the child’s parents to plan the child’s program for grade eleven, September 2002, so that XY will continue to demonstrate progress at the gifted level, and enjoy a smooth transition to Secondary School C if the child chooses to go there.
3. That a transition plan for XY be designed collaboratively with XY’s parents and appropriate educational staff.
4. That an Individual Education Plan be developed to accommodate the advanced credits that the child has already achieved, and it should be modified as required to continue to meet the child’s needs.

Marilyn Thain – Chair _____

Paula Barber- Member _____

Donna Gracey – Member _____

February 18, 2002