



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 1966;

BETWEEN

W. B. AND J. B.

Appellants

- and -

THE BOARD OF EDUCATION FOR THE CITY OF NORTH YORK

Respondent

Tribunal Members:

Grant R. MacDonald	Chair
David Peirce	Member
Orville McDowell	Member

For the Applicants:

Marie Irvine

For the Respondent:

Donald H. Rogers, Q.C.

The hearing was held in Toronto on April 30, May 1, 1984

## **APPELLANTS' REQUEST**

The appellants, on behalf of their child, were granted leave to appeal to a Central Regional (English) Special Education Tribunal by the Ontario Special Education (English) Tribunal in its decision of January 26, 1984 under subsection 36(1) of the *Education Act*, R.S.O. 1980, c.129 (hereinafter called "the Act")

Counsel for the appellants asks that the Central Region (English) Special Education Tribunal (hereinafter called "the Tribunal") make one of four orders:

1. An order directing the Board of Education for the City of North York (hereinafter called "the Board") to create a full-time placement for the student in a very small class for learning disabled teenagers in a North York school;
2. As an alternative, an order directing that the Board purchase such a program from another school board;
3. As an alternative, an order directing the Board to issue a statement that it cannot provide an educational program to meet the student's needs;
4. Failing any of the previous three orders, grant the appeal on the grounds that the proposed placement is not appropriate and does not meet the student's needs.

## **RESPONDENT'S REPLY**

The respondent argues that the placement proposed for the student at Northview Secondary School was entirely appropriate, that the decision of the Identification, Placement & Review Committee (hereinafter called "the I.P.R.C.") of June 9, 1983 was correct, and in the student's best interest and that the decision of the Special Education Appeal Board, June 27, 1983, was correct, and in the student's best interest. The respondent notes that an assessment of the program and the appellant could not be made because the appellant was not a resident pupil of the Board in the 1983-84 school year.

The respondent argues that the orders requested by the appellant could not be granted for the following reasons:

1. The order requesting a full-time placement for the student in a very small class for learning disabled teenagers had been met in the class proposed at Northview Secondary School;
2. The Tribunal does not have the authority to direct the Board to purchase a program from another school board;

3. The Tribunal does not have the authority to order the Board to issue a statement saying that it cannot provide a program for the appellant if the Board does not believe it to be so;
4. The respondent indicates it will attempt to show that the recommended placement is entirely appropriate and in the student's best interest.

## **APPELLANTS' PRESENTATION**

Counsel on behalf of the appellants states that the appeal is against the proposed placement for the student determined by the I.P.R.C. June 9, 1983;

"The Committee determines that placement in a self-contained Special Program (Learning Disability) at Northview Secondary School effective 6 September 1983 would be appropriate" (Exhibit #9).

Further, the appeal is against the decision of the Board adopting the recommendation of the Special Education Appeal Board of June 27, 1983 upholding the decision of the I.P.R.C.

Drawing on testimony from witnesses and exhibits including reports of private assessments made on the student, counsel argues that on the basis of the student's twelve year experience in North York schools, the student's achievement indicated by standardized tests as approximately a grade 4-6 level is unacceptable.

Citing comparative evidence from reports dated 1975 by Dr. Doris Sutherland Roche (Exhibit #1) and March 1983 by Dr. Bernice S. Mandelcorn (Exhibit #3) the appellants contend that the student's progress over 8 years is minimal and not in keeping with their view of the student's potential.

Further, it is contended that the parents have no specific plan by which to judge the proposed placement at Northview Secondary School.

Counsel for the appellant based its appeal in part on the second page of a document purporting to be part of the recommended placement and program for the student and called an Individual Education Plan Review (hereinafter called "the I.E.P.R.") dated February 15, 1983. The appellant also placed great import on the report of Dr. Wm. G. Ford, Psychologist, and on his verbal testimony and comment regarding the I.E.P.R. Dr. Ford, while agreeing that the student's needs were included in the I.E.P.R., contended the needs were so loosely stated that the I.E.P.R. could be applicable in general terms to any exceptional pupil and therefore was of little specific value for this student.

Counsel for the appellants contends that the I.E.P.R. is all that the parents have before them to determine the nature of the proposed placement at Northview Secondary School.

Finally, it is argued that the student requires placement on a full-time basis, meaning, for the greater part of the school day in a small group setting for learning disabled teenagers. The proposed placement at Northview Secondary School is not seen by the appellants to meet these criteria.

Evidence is drawn from the Sutherland Roche, Bleiweiss, Mandelcorn, and Ford reports to support the appellants' contention that the student requires a full-time segregated small group placement for learning disabled pupils. Dr. Ford in testimony conceded that a full-time placement would allow for mainstreaming for the student only when the student is in a program providing a grade 5/6 level of challenge in order to assure achievement.

In support of the appellants' position, the appellant, the student, Mrs. E. Inglis and Dr. W. Ford were called as witnesses; as well, Exhibits 1 through 5 were presented.

## **RESPONDENT'S PRESENTATION**

Counsel for the respondent states that the issue focuses entirely upon whether the placement proposed for the student for September, 1983 is appropriate.

Counsel argues that the student has been in special education programs for only about 3 months since 1981, noting that the student's health improved and that the student experienced marked academic improvement in the special class placement at Bathurst Heights Secondary School.

Drawing on testimony from witnesses and exhibits the respondent argues that the recommended placement was and continues to be appropriate for and in the student's best interest. Further, that the recommended placement for the student at Northview Secondary School is full time, meaning, for the greater part of the school day, and is a small group setting for learning disabled teenagers.

In support of argument the respondent called Ms. Veronica Lacey, Principal, Northview Secondary School and Dr. Marjorie Perkins, Board Chief Psychologist, and presented Exhibits 6 through 10.

Ms. Lacey described the Northview Secondary School special education program, including such matters as pupil/ teacher ratio and the individualized/integrated full-time class functions.

Dr. Perkins noted specifically that there is no dispute with Dr. Ford over his assessment or recommended placement for the student. Dr. Perkins asserts that the program at Northview Secondary School is compatible with Dr. Ford's recommendation for a placement for the student.

## **BASIS OF TRIBUNAL FINDING**

The Tribunal finds that there is no dispute with respect to the identification of the student as

an exceptional pupil with specific learning disabilities. It is also undisputed that the student's specific learning disabilities require a placement in a small group setting for learning disabled teenagers for the greater part of the school day. The Tribunal finds that the full-time placement proposed by the Board meets the stated requirements of this student.

The Tribunal finds that if there is a dispute it is with the interpretation placed upon the term "full time" as meaning full-time segregated placement taken in its literal sense. All witnesses concede or agree that some planned integration appropriate to the student's level and needs is desirable.

The Tribunal notes considerable confusion surrounding the purpose and the use of the I.E.P.R. dated February 15, 1983. From evidence presented the Tribunal establishes that the I.E.P.R. was a resource document, prepared by professional educators, for professional educators, couched in educational jargon, prior to the annual review of the student's placement at Bathurst Heights Secondary School. The document proves to be misleading as evidence because it is construed by the appellants as the sole plan for the student's proposed placement in Northview Secondary School commencing September, 1983. The Tribunal finds that the appellants place undue reliance on a document which was never intended for the purposes to which it was put. The Tribunal questions the wisdom of the Board in presenting to parents a professional working document for professionals. The Tribunal also notes that the title, Individual Education Plan Review, used by the Board is misleading. The Tribunal feels very strongly that confusion and inappropriate expectations are generated in the minds of the appellants with respect to the placement proposed for the student.

However, the Tribunal notes that the parents were present at both I.P.R.C. meetings and at the second meeting of June 9, 1983 were party to discussion of the student's proposed placement at Northview Secondary School.

The appellants' refusal to attend parent meetings at the invitation of school personnel from Northview Secondary School resulted in their not having investigated fully the proposed placement for their child. The Tribunal finds that the appellants adopt the view that the placement, "...was more of the same", without exercising the responsibility to substantiate their claim.

The Tribunal notes with interest the evidence given by Ms. Lacey, and Dr. Perkins, in which the placement at Northview Secondary School is discussed in direct reference to the student's needs. Further it is pointed out that such a placement both in the segregated and integrated aspects would be designed in conjunction with the teachers, consultants, resource personnel and the parents, after the student would be placed in the program. The Tribunal finds this approach to be most appropriate to the student's needs and best interest.

The Tribunal in this instance, has been requested to judge the appropriateness of placement of the student.

The word “placement” is used throughout Ontario Regulation 554/81 and more particularly clause 2(3) (d) thereof. In the Act and regulations the purpose of Tribunals is to determine whether or not the identification and/or placement for a pupil is appropriate.

However, we note that there is no definition of “placement” included in the Act or regulations, or in any of the policy statements or directives from the Ministry of Education to school boards.

The Tribunal notes, as did counsel for the appellants, that in D. v. Muskoka Board of Education released February 28, 1984, which case dealt with “placement” of a particular pupil, the Provincial Tribunal remarks on the appropriate placement of a pupil. We note in that hearing counsel for the appellants attempts to have such matters as pupil-teacher ratio; specific methodology; particular teacher qualifications; specific direction to the teacher and school; and other such factors included within a definition of “placement”. The Provincial Tribunal responds in its decision as follows:

“the Tribunal believes that what the parents are seeking goes beyond that which can be reasonably interpreted as placement. The parents, in addition to their wishes respecting the placement of their child, make requests that encompass matters such as teaching strategies and methodology, teacher qualifications, the program of studies, and the philosophy of education--all matters outside the scope of this Tribunal.”

This Tribunal is of the opinion that two factors stated in D. v Muskoka Board of Education must be considered in determining placement in certain instances, and, for this reason, this Tribunal distinguishes D. v Muskoka Board of Education and considers program of studies, and philosophy of education, as two factors to be considered in determining placement.

In determining what placement involves, the following matters are considered:

- (a) The identification process required under Ontario Regulation 554/81 will by its process clarify and indicate the pupil requirements or needs;
- (b) Appropriate placement must by logical extension in some way answer, provide, or meet, the pupil requirements or needs. When determining appropriate placement, therefore, one must decide what factors are required to meet the needs of a pupil;
- (c) In order to arrive at an appropriate definition of placement, for a particular exceptional pupil, the location, philosophy of education, objectives for the pupil, curriculum or program of studies, are factors which may be considered.

## TRIBUNAL DECISION

After hearing the evidence the Tribunal determines that under the authority of subsection 36(6) of the Act the appeal is dismissed and that the full-time placement at Northview Secondary School offered by the Board was and continues to be appropriate to the student's needs and best interest.

There may be some disagreement with the Board and the connotation accorded "full time placement" and the denotation which the appellants place upon it. However, in examination-in-chief and cross examination of the various experts presented by appellants and respondent, it becomes evident that there is little, if any, difference in connotation of "full time placement" as between the appellant and the respondent.

Further, the program offered in this placement is in accordance with paragraph 7 of section 149 of the Act and section 35 of Regulation 262 in which the maximum class size for a self-contained class for pupils with severe learning disabilities is delineated and qualified by the following phrase:

"the maximum enrollment in a special education class shall depend upon the extent of the exceptionalities of the pupils in the class and the special education services that are available to the teacher but in no case shall the enrollment in a self-contained class exceed,

a) in a class for pupils...who have severe learning disabilities...eight pupils;"

The Tribunal notes that the pupil-teacher ratio in the Special Education Class (learning disabilities) at Northview Secondary School ranges from 2 to 1, to 7 to 1, with an average of 5 to 1.

The Tribunal believes that the placement as described at Northview Secondary School would provide the student with an educational program suited to the student's specific needs, based on and modified by the results of continuous assessment and evaluations as required of boards by paragraph 63 of subsection 1 (1) of the Act. Further it will provide the appropriate setting for integration which will permit the student to function in a manner that is more closely related to the kind of day-to-day situation that the student will confront in dealing with peers and other aspects of life.

Such a placement requires the support not only of school and board personnel but parents and student as well. Matters such as attendance, parental attitude toward the school and board, and expectations of the student all surfaced during the hearing. There is little doubt such matters have an influence upon the student's success at school.

Further, the Tribunal finds the aforementioned I.E.P.R. creates serious misunderstanding for the appellants. Consequently, it is recommended that the Board re-examine the title of the I.E.P.R. and use of such professional working documents as notice to parents of proposed placement for exceptional pupils.

In dismissing the appeal for the reasons stated above, the Tribunal is responding to the alternative decision which the appellants requested of the Tribunal. The Tribunal finds that it need not respond to the alternative orders requested insofar as they are predicated upon the placement being inappropriate to meet the student's needs.

The Tribunal advises counsel that the appellants and the respondent are responsible for their own costs.

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Grant R. MacDonald, Chairman

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David Peirce, Member

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Orville McDowell, Member

June 27, 1984