



IN THE MATTER OF the Education Act, R.S.O. 1990.c.E.2, as amended, 57(3),
IN THE MATTER OF Ontario Regulation 181/98,
AND IN THE MATTER OF the minor child, born 1991

BETWEEN

Ms. I Appellant

-and-

The Toronto District School Board, Respondent

Tribunal Members:

Marilyn Thain	Chair
Donna Gracey	Member
Deborah Moskal	Member

Appearances

MJ	Advocate for the Appellant
Ms. Brenda Bowlby	Counsel for the Respondents

Bill Wyman	Secretary
Stephen Kelly	Secretary
Thomas Sandford	Court Reporter

A Preliminary Hearing to hear preliminary issues was held by teleconference on March 29, 2005, 9:30 a.m. to 10:45 a.m.

Introduction

This Tribunal was held by teleconference on March 29,2005 to hear preliminary issues brought forward by the advocate for the appellant.

At the opening of the hearing, the Chair stated that the Tribunal's legislative authority is set out under section 57 of the *Education Act*. The procedures followed are governed by the *Statutory Powers Procedure Act* and by the principles of procedural fairness. These principles guide our process to ensure that each side has a genuine and fair opportunity to present their case during these proceedings. We will attempt to give everyone an opportunity to say what needs to be said so that we can arrive at a decision that is in the best interest of the appellant's child.

Positions of the Parties

The advocate for the appellant sent in a list containing of the following six preliminary issues:

1. Production of financial documentation as it relates to the student
2. Production of C.V.'s relating to board witnesses.
3. Production of the O.S.R. through Ms. Bowlby's office.
4. Objection to be raised regarding psychological information.
5. Issue of who is calling board personnel.
6. Issue of rescheduling the Tribunal hearing.

Counsel for the Toronto District School Board (TDSB), Ms. Brenda Bowlby, raised no issues at this time.

Proceedings

1. Financial documentation as it relates to the student

The advocate stated that she has asked for information concerning the finances of the board as it relates to the I.S.A. claim for the student. She said that the I.P.R.C. decision was made based on the position taken by the chair of the IPRC, that "there would be no regular placement because they [the board] would not guarantee an aid because of finances." The advocate stated this financial information is relevant to her case and she wants the board to produce all documents pertaining to the student and the I.S.A. (Intensive Support Amount) funding. She wants to know what the board is reporting about the student to generate funds. She stated that she did receive a report that had no signature and no date on it. She went on to say that a document with no signature and no date is an invalid document.

Ms. Bowlby stated that one document exists now, the validator's assessment form. She stated that she did provide that to the advocate and that she advised her that it was a bad copy, but that it was signed and dated. She indicated that she cannot produce the claim documents because they have been shredded. She stated that most of the information found in a claim could also be found in an O.S.R.

Decision:

With respect to the validator's report that the advocate has already received, the Tribunal asks the board to approach the Ministry of Education to obtain a clear and legible copy and to make this available to the advocate.

The Tribunal does not rest its decision of placement on the financial situation of a school board but rather on information that enables the panel to make a decision that is in the best interests of the student. The broader school board financial information is not relevant to this decision.

With respect to the individual claim file, no determination at this time will be made regarding the relevancy of the claim file, but the advocate is free to question witnesses about the claim, including questions regarding the contents of the claim, the process for collecting documentation and the practice of shredding these documents.

2. Production of C.V.'s of school board witnesses and the decision as to who is calling board personnel.

The advocate requested that she receive curriculum vitae of every witness that Ms. Bowlby planned on using during the hearing scheduled to commence on April 04, 2005.

Ms. Bowlby stated that she would be willing to disclose the curriculum vitae of her witnesses if the advocate produced the C.V.'s of any witnesses that she is putting forward as having expertise.

Both the advocate and Ms. Bowlby agreed to provide one another with the curriculum vitae of the witnesses they planned on calling.

Ms. Bowlby has listed the witnesses she plans to call at the Tribunal. The advocate indicated that these witnesses were also on her list. The advocate indicated that one of the board people she wished to call that is employed by the Board is one that Ms. Bowlby has indicated she will not be calling.

Decision:

The parties on consent have agreed to exchange curriculum vitae for the witnesses they plan to call that have expertise in this matter.

Typically curriculum vitae are only exchanged for the purpose of determining expert witnesses. An expert witness is a person who testifies at a hearing because she has special knowledge in a particular field and can give opinion evidence to assist the Tribunal in coming to its decision. Non-expert witnesses are only permitted to testify about facts they observed and not their opinions about these facts. The Tribunal will determine upon request which witnesses meet the requirements of an 'expert' witness.

3. Production of the OSR.

Ms. MJ requested a copy of the contents of the O.S.R. for the student. She stated that she has been requesting this for a long time and would like to have it made available.

Ms. Bowlby stated that this has always been made available to her. Because the appellant does volunteer in the school, it would be convenient for her to copy it herself. The advocate indicated that this was not satisfactory. Ms. Bowlby agreed to have a copy made available to her today or tomorrow.

Decision

The Tribunal is in agreement with the process discussed for Ms. Bowlby to facilitate the making of a copy of the contents of the O.S.R. for Ms. MJ by March 31, 2005.

4. Objection to Psychological Testing

The advocate stated that the I.P.R.C. decision had “nothing to do with psychological information; that it wasn’t even part of our I.P.R.C.” She believed the psychological information was extraneous to the appeal. She agreed to address this issue when the merits of the case were presented at the oral hearing scheduled to commence on April 04, 2005.

Ms. Bowlby stated that the psychological information is very relevant. However the issue of relevance of evidence will be determined by the Tribunal when the evidence is presented.

Decision

The Tribunal will determine the relevancy of the psychological information during the hearing on the merits of the case.

5. Rescheduling of the Tribunal

The advocate requested that the Hearing be rescheduled as she will not have time to read over the contents of the OSR nor financial documentation, if it is made available.

Ms. Bowlby argued that there is no reason to re-schedule the hearing. The advocate has known for some time when this hearing was taking place. Ms. Bowlby has serious concerns about putting this case off beyond April and questions whether or not it would be completed this year given the limitations on witnesses in the summer.

Decision:

The Tribunal has accepted Ms. Bowlby’s arguments and will proceed with the hearing beginning April 04, 2005, at 9:00 a.m. in the Humber Room of the Holiday Inn.

The Tribunal concludes that the advocate has had sufficient time to review most of the contents of the O.S. R. as documents contained therein are documents that the parents have already read and could have been copied, such as Individual Education Plans, Report Cards, Psychological Reports and/or I.P.R.C. decisions. If there are any

additional reports that have not been seen prior to the hearing, then an appropriate amount of time will be given to allow the advocate to review such documentation.

The Tribunal was unanimous on the above decisions.

Marilyn Thain – Chair

Donna Gracey – Member

Deborah Moskal – Member

Dated – March 31, 2005