



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 1989

BETWEEN

S., Appellant

-and-

The Halton District School Board, Respondent

Tribunal Members:

Marilyn Thain	Chair
Julie Lindhout	Member
James McCaughey	Member

Appearances:

Nadya Tymochenko	Counsel for the Halton District School Board
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Louise Sibbald	Secretary
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The preliminary hearing was held September 25, 2006, in Burlington, Ontario.

INTRODUCTION

The appellant, appealed to the Ontario Special Education (English) Tribunal, (the "Tribunal") on February 20, 2004 regarding the special education placement of her child, an exceptional pupil. The appellant wants a self-contained placement for her child in a learning disabilities class.

The Identification, Placement and Review Committee (IPRC) held on June 2, 2003 identified the appellant's child as exceptional, Communication – Speech and Language Impairment, and Physical – Physical Disability. The placement was Regular Class with Withdrawal Assistance. The Special Education Appeal Board (SEAB) decision dated December 19, 2003, agreed with both the identification and the placement for the student as determined at the June 2, 2003, IPRC. On January 14, 2003, the Halton District School Board (HDSB) accepted the recommendations of the SEAB.

The student is currently in the fourth year of secondary school in the HDSB. The student is in a Regular Class with Withdrawal Assistance.

The Tribunal scheduled the hearing on the merits on several occasions and each time the appellant requested an adjournment. In September 2006 the appellant was no longer responding to oral communications and indicated that she would only respond to written correspondence. On September 18, 2006, written communication was sent to the appellant giving Notice of a Hearing on September 25, 2006, to determine whether the Tribunal was going to dismiss the case. The appellant did not appear at the hearing. The HDSB was represented at the hearing by counsel. HDSB counsel made a motion to dismiss the appeal on the basis that it is moot. This decision addresses this preliminary motion.

RELEVANT STATUTORY PROVISIONS

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. The Tribunal's procedures are governed by the *Statutory Powers Procedure Act, R.S.O. 1990, c. S 22*, the Tribunal's *Rules of Procedure*, and the general rules of "natural justice" and "procedural fairness" applicable to administrative tribunals.

Education Act, R.S.O. 1990, c. E.2

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 of 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 or placement.

Regulation 181/98

Regulation 181/98: Identification and Placement of Exceptional Pupils governs the identification and placement of exceptional pupils, IPRC reviews, appeal procedures and the role of parents/guardians in these proceedings. This Regulation provides a mechanism for parents to appeal identification and placement decisions of an IPRC to an SEAB and sets out the time lines that must be met for such an appeal.

RELEVANT CHRONOLOGY

1. February 20, 2004: the parent appealed the identification and placement of her child to the Tribunal.
2. February 23, 2004: the secretary of the Tribunal requested that the appellant complete the Notice of Appeal form or the former Case File Data Sheet.
3. August 18, 2004: the secretary communicated with Mr. Formosa, counsel for the appellant, to request that the information be completed and sent to the Tribunal.
4. February 8, 2005: the secretary received communication from Mr. Formosa indicating that he continued to be the appellant's counsel, but the Notice of Appeal was not completed nor was any other information provided.
5. April 21, 2005: an initial teleconference was convened with both parties and the date for the preliminary hearing on a motion by the HDSB regarding jurisdiction of the Tribunal was scheduled for June 21, 2005.
6. June 14, 2005: the Board withdrew its motion scheduled to be heard on June 21, 2005, regarding the jurisdiction of the Tribunal. The hearing was adjourned and a teleconference was planned for June 21, 2005, to reschedule the hearing on the merits.
7. June 15, 2005: a further IPRC was held. The parents did not attend. The Statement of Decision was sent to the parents on June 23, 2004.
8. June 21, 2005: a teleconference was convened with both parties and dates for the hearing on the merits of the parent's appeal were scheduled for October 12–14, 2005 and October 17–20, 2005.
9. September 20, 2005: the Tribunal granted an adjournment of the hearing of the merits at the request of the appellant and with the agreement of the Board, as many of the witnesses were not available because of religious observances.
10. October 4, 2005: counsel for the appellant requested adjournment of the mediation scheduled for October 11, 2005. The mediation was cancelled with consent of both parties. The mediation was not rescheduled.
11. December 2, 2005: a scheduled teleconference was convened with both parties. Counsel for the appellant informed the participants that mediation had been planned but had been deferred because of a health crisis in the appellant's family. Counsel for the appellant requested that the teleconference be

rescheduled to a date late in January, 2006. Both parties agreed and the Tribunal granted the rescheduling of the teleconference.

12. January 20, 2006: the Tribunal convened a teleconference with the parties. Since the parties had scheduled mediation for April, hearing dates were scheduled for May 29, 2006 with disclosure to be no later than May 12, 2006.
13. On April 21, 2006: a teleconference was held to set dates for a preliminary hearing to determine the Tribunal's jurisdiction of this Appeal. At that time Albert Formosa of WeirFoulds, along with Michael Schwartz, was representing the appellant, and the Halton DSB was represented by Nadya Tymochenko.
14. May 15, 2006: correspondence was received from counsel for the appellant to request a postponement of the hearing to allow for a mediated settlement.
15. May 29, 2006: the Tribunal convened a teleconference with the parties. The revised hearing dates were set for September 25–29, 2006. September 15, 2006, was set as the disclosure date for both parties to update their information.
16. June 2006: mediation took place but did not result in settlement.
17. July 27, 2006: Weir Foulds informed counsel for the HDSB and the Tribunal of its formal withdrawal as solicitors of record with respect to the appellant's appeal to the Tribunal.
18. September 12, 2006: the appellant sent correspondence to the Tribunal requesting that all future communications be made in writing. She indicated to the secretary that she was no longer represented by counsel.
19. September 12, 2006: counsel for the HDSB notified the Tribunal that it would be requesting an adjournment of the scheduled hearing if the appellant did not complete the disclosure due September 15, 2006.
20. September 18, 2006: the Tribunal sent a Notice of Hearing to the parties to appear for a scheduled hearing on September 25, 2006 to hear submissions by the parties regarding whether the appeal filed by the appellant in December 2003 should go forward.
21. September 18, 2006: the Tribunal notified both parties that a hearing would be held on the first date of the scheduled hearing dates, September 25, 2006, and that the remainder of the days, September 26–29, 2006, would be adjourned.
22. September 25, 2006: the Tribunal was convened. The appellant did not attend. The HDSB was represented by counsel. At that time counsel for the HDSB made a motion to dismiss the appeal. The Tribunal heard argument from the HDSB in support of its position.
23. September 26, 2006: counsel for the HDSB notified the Tribunal that the Board's submissions were sent to the appellant.

24. September 30, 2006: the Tribunal communicated with both parties that it was considering dismissal of the appeal. The Tribunal stated that it was prepared to review submissions from the appellant indicating her views on whether the Tribunal should dismiss the appeal. Accordingly the Tribunal directed the appellant to provide written submissions by the close of business on October 13, 2006.

No submissions were received and no further communications have been received by the Tribunal from the appellant.

MOTION

At the status hearing on September 25, 2006, Nadya Tymochenko, counsel for the HDSB presented submissions in support of her motion to dismiss the Appeal.

Respondent's Arguments

Ms. Tymochenko stated that it was the Board's position that the Tribunal should not proceed to hear this appeal, as the appeal will be moot by the time a hearing is actually scheduled.

She said that the student is in the fourth year of secondary school and doing very well. The student has nineteen credits and will take eight credits this year. The student will have twenty-seven credits at the end of the 2006–07 school year. The student will need three credits to graduate. Counsel stated that if the Tribunal should find for the Appellant, the Board would not be able to implement a self-contained classroom placement for the student until September 2007, when the student will be only three credits or fewer from graduation.

Ms. Tymochenko stated that the hearing for this appeal has been delayed to such an extent that the Tribunal should refuse to hear the appeal.

She stated that it is the Board's position that the delays have been caused by the appellant.

Appellant's Arguments

The appellant did not submit arguments. She did not appear on September 25, 2006, nor did she make any submissions to support her views to continue with the appeal to the Tribunal.

REASONS

The Tribunal's authority is set out in Section 57 of the *Education Act*.

The appeal to the Tribunal has been delayed or adjourned on several occasions, as a result of the appellant's request or actions.

The Tribunal observes that there is an annual review IPRC process prescribed by *Regulation 181/98*. These IPRCs are held yearly because students and their needs

continue to change. This appeal arises from the IPRC decision of June 2003, and therefore annual reviews should have taken place in 2004, 2005, and 2006. A further IPRC should be scheduled for early 2007. The Tribunal is concerned that the IPRC decision under appeal is more than three years old, and it observes that subsequent IPRC meetings since that time have provided opportunities for the student's parents to express their views regarding their child's educational arrangements and best interests.

The Tribunal agrees with the Board's submission that the current appeal of the IPRC decision of 2003 is now moot because of the numerous delays caused by the appellant.

Therefore the appeal is dismissed.

Marilyn Thain, Chair

Julie Lindhout, Member

James McCaughey, Member

DATED November 13, 2006