



ONTARIO SPECIAL EDUCATION (ENGLISH) TRIBUNAL File # 55

IN THE MATTER OF the *Education Act*, R.S.O. 1990c.E.2, as amended, ss. 57(3),
IN THE MATTER OF Ontario *Regulation 181/98*,
AND IN THE MATTER OF the minor child born 1994

BETWEEN

Ms. C., Appellant

-and-

The Toronto District School Board, Respondent

Tribunal Members:

Marilyn Thain	Chair
Uma Madan	Member
Noel Williams	Member

Appearances:

C	Parent
MJ	Advocate
Brenda Bowlby	Counsel for the Toronto District School Board
Stephen Kelly	Secretary

The hearing on the merits was held on May 8, 9, 10, 11, June 30, and July 6, 2006, in Toronto, Ontario.

INTRODUCTION

The Appellant, appealed to the Ontario Special Education (English) Tribunal (the "Tribunal") regarding the placement of her child, an exceptional pupil. The Identification, Placement and Review Committee (IPRC) on May 3, 2004, identified the child as an exceptional student: Autism and Developmental Disability. This identification is not in dispute at this time. The placement decision of the IPRC was a special education class. It is this placement that the parent is appealing.

The child was twelve years old at the time of this hearing and was in a regular Grade 5 class in the Toronto District School Board (TDSB). The child first entered school in Junior Kindergarten in February 2000 at the age of six. During the 2003-04 school year the child was placed in a Grade 2 class with part-time integration with age-appropriate peers in Grade 4. The following year the child was placed in a Grade 5 class. The child remained in this class for two years, even though the child should have been moved to a middle school. The child's school history indicates that from the time the child first entered school in Junior Kindergarten until the child was placed in a Grade 5 class, the child was in regular classes that were not at age-appropriate levels.

The parent appealed the IPRC decision to a Special Education Appeal Board (SEAB) but no appeal was heard because of delays caused by the TDSB. The Tribunal, receiving no objection from the TDSB, heard the Appeal in order to resolve the dispute in a timely manner.

The appellant's position was that a Grade 6 regular class placement was appropriate for her child. The TDSB's position was that a self-contained special class placement in a middle school would better meet the child's needs.

The hearing took place over six days. Although the advocate disclosed a list of twenty-four witnesses, she called only two witnesses: the child's mother and Ms. A, a family support co-ordinator for Community Living.

Ms. Bowlby, counsel for the TDSB, called three witnesses: the classroom teacher, the principal of the Public School, and a co-ordinator of special education for the TDSB.

On the first day of the hearing, the Tribunal ruled that it would hear testimony from the school year 2003-04 to the present. The Tribunal agreed to admit all available assessments or medical reports that were completed before that time frame because the results could be relevant to placement.

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.

Subsection 8 (3): Identification programs and special education programs and services: The Minister shall ensure that all exceptional children in Ontario have available to them, in accordance with this Act and the regulations, appropriate special education programs and special education services without payment of fees by parents or guardians resident in Ontario, and shall provide for the parents or guardians to appeal the appropriateness of the special education placement, and for these purposes the Minister shall,

- (b) in respect of special education programs and services, define exceptionalities of pupils and prescribe classes, groups or categories of exceptional pupils, and require boards to employ such definitions or use such prescriptions as established under this clause.

Regulation 181/98:

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

Subsection 17 (1): When making a placement decision on a referral under section 14, the committee shall, before considering the option of placement in a special

education class, consider whether placement in a regular class with appropriate special education services,

- (a) would meet the pupil's needs; and
- (b) is consistent with parental preferences.

Subsection 17 (2): If, after considering all of the information obtained by it or submitted to it under section 15 that it considers relevant, the committee is satisfied that placement in a regular class would meet the pupil's needs and is consistent with parental preferences, the committee shall decide in favour of placement in a regular class.

Cases Cited:

E v. Brant County Board of Education, [1997] 1 S.C.R. 241, cited by Ms. MJ.

I v. Toronto District School Board, [2006] O.J. No. 1867 (Div.Ct.) cited by Ms. Bowlby.

ISSUE

The issue before the Tribunal is the placement of the child.

1. Appellant's Position

The appellant wants her child to have an integrated placement. She wants her child in a regular Grade 6 classroom with appropriate supports. The appellant believes that integration in a regular classroom is the best placement for her child because it allows her child to benefit from the modelling provided by age-appropriate peers. She said that the IPRC did not clearly inform her of how a special education class would meet her child's communication needs and other needs.

The advocate said that the TDSB has not attended to the child's needs, which the appellant made known to the school. She stated that the TDSB has taken steps each year to avoid integrating the child. The advocate claimed that recommendations made by various service providers have not been implemented. She added that the child does not have an augmentative communication system set up. She stated that the TDSB has not made accommodations for the child's communication needs in particular, and that in general the child's needs have not been met.

2. Respondent's Position

Ms. Bowlby, counsel for the Respondent stated that the child has a dual identification of autism and developmental disability. She indicated that the child needs a smaller class placement with intensive instruction, which is more than the child can receive in a classroom of twenty-eight students. She stated that it is not

fair to the child to continue to place the child in a regular class. Ms. Bowlby claimed the child needs to be in a special class where there is an opportunity to focus on those things that are within the child's capabilities, as the child is not able to meet the Grade 5 curriculum or the Ontario curriculum at all. She described the child's various needs. She indicated that the child does not have a communication system and that the child cannot do anything independently.

SUMMARY OF EVIDENCE

1. Communication Needs

Witnesses for both parties presented testimony regarding the child's communication skills. The evidence centred around the fact that the child is non-verbal and around the need to use the Picture Exchange Communication System (PECS) to help the child communicate.

In October 2000, Speech and Language Pathology Services of the TDSB reported that the child had no "oral language production". In June 2003, the Occupational Therapist Progress Summary stated that the child is "non-verbal".

In a report dated March 2, 2000 from Dr. Superina-Bell, a pediatric consultant, with Toronto Western Hospital, the child was diagnosed with autistic disorder. The follow-up report from Dr. Superina-Bell dated September 5, 2000 stated that the child was receiving speech input by using the PECS from Bloorview MacMillan Children's Centre ("Bloorview MacMillan"). The Centre suggested this approach because it is a way for the child to communicate, and because the child does not talk. Dr. Superina-Bell also reported that the PECS was introduced in 1998 when the child attended Norminster Daycare.

In September 2004, the Speech and Language Pathology Services Report stated that according to the child's teacher, the child requires hand-over-hand assistance to communicate with pictures most of the time.

The appellant stated that the PECS was used consistently at home. Ms. C described how she uses the PECS with her child on a daily basis, but she also indicated that the child was still in Phase 1 and that the child was only able to use the PECS with hand-over-hand assistance. She described a process that was detailed and showed how the PECS was used with every move the child made.

The appellant stated that she was concerned that it was taking so many years to put the PECS in place at school, and that at this time, new pictures should be added, rather than just using the beginning pictures. She reported that the PECS had been used off and on at school between 2003 and 2004 with the classroom teacher. The appellant said that she understood that both the special needs assistant (SNA) and the teacher would be using the PECS

with the child, but that she did not see the PECS being used when she came to school with the child each morning, even when the child was taking off the coat and knapsack. The appellant indicated that at the end of 2003-04, she had concerns as to whether the child's communication needs were being met at school.

Ms. A., the family support co-ordinator, testified that on one occasion when she was in the child's class to observe for part of a day, she didn't see the PECS being used. She said that she did not see the SNA using the PECS on the day of her visit. She did see some pictures that belonged to the PECS on a table, which included pictures of the child. She also indicated that the child is at a level where the child needs to be shown the pictures by another adult or student, and that the child is not able to do this independently. She said that the child requires hand-over-hand assistance, although everyone is working towards the child gaining independence. Ms. A. agreed that the child's biggest need is communication because the child is non-verbal. Ms. Bowlby emphasized in her cross-examination of Ms. A. that the day of her visit was not a typical day.

The Individual Education Plan (IEP) 2003-04 indicated that PECS was the communication system that was to be used throughout the child's day. The Grade 5 teacher said that the staff used the PECS. He described a small photo album where the SNA used the pictures to help the child understand. He said that the principal of the Public School, has a digital camera to take pictures that are used to communicate with the child. When Ms. MJ cross-examined the teacher, she asked him to describe what type of PECS he used with the child during the school day. First, the teacher said that he was not using the PECS. Later he said that the PECS is transferred to the staff person who is actually working with the child. The principal said that the child is not capable of exchanging a picture independently, so the teacher would show him the picture of what it was that he would like the child to do.

During the child's first year in Grade 5, the autism team for the TDSB visited the school. The principal of the school indicated to the appellant that the autism team said they observed that the child had regressed from the last time that they had visited, and were surprised at this.

The principal said that the child has no words that he consistently understands, but sometimes when she is with the child and says "Come on, let's go" and she gestures and starts walking, the child will come. The child cannot communicate with other students. The teacher stated that the child does respond to [the child's] own name.

A Comprehensive Rehabilitation and Mental Health Services (COTA) Progress Summary dated June 19, 2003 indicated that the child would benefit from developing some keyboarding skills which may be the most efficient method for the child to communicate. The appellant stated that the child did not have a computer at that time [referring to 2003]. There is a

computer in the Grade 5 classroom now, and it has software called 'Board maker' which is used to generate the PECS pictures.

The Speech-Language Pathology Service Report of September, 2004 stated that the child requires hand-over-hand assistance to use a computer. In the classroom, the child did not approach the computer spontaneously.

The teacher told the advocate in cross-examination that the child used the computer in a very limited way. The child needs consistent assistance as the child does not look at the screen but instead looks away.

2. Self-Regulation and Sensory Needs

Ms. A. said that the child is being habit trained and is in a toileting program.

At the beginning of the 2004-05 school year in Grade 5, J. Breuer, a behaviour management consultant from Community Living Toronto, met with the staff who work with the child, to share a strategy for collecting data regarding toileting and habit training. A time schedule was organized that included the use of the PECS. The schedule was presented at the school. The appellant testified that the data sheets from the school in relation to this toileting program were not completed. Later, Kerry's Place Autism Services set up a toileting schedule which was a revised version of J. Breuer's original schedule. The appellant indicated that the school did not have data to give to Kerry's Place. She said that she did not know if the SNAs were told how the data was to be collected.

The teacher stated that he has enforced the revised schedule. He said that the schedule was downstairs and in his room, as well as in the sensory room (described below). He stated that even when a supply teacher came in, the first thing they talked about was the toileting schedule. He said there had been limited success. The teacher testified that the child would have "accidents" in the classroom. These required taking time out from the rest of the class in order to clean up.

The teacher indicated that the child cannot be left without supervision. There are many concerns with the child putting things into [the child's] mouth such as markers. He said that the child gets pleasure from putting [the child's] fingers in the mouth. The principal concurred and stated that there is an issue with the child putting hands in mouth. The staff encouraged the child to keep [the child's] hands at the side. In May 2004, the certified occupational therapy assistant report (COTA) recommended that food and play opportunities be substituted for the child's mouthing of objects and fingers.

This same report recommended a Snoezelen room, designed as a self-calming relaxation area in the classroom. The family support co-ordinator testified that the child had sensory issues and was tactile defensive. She said that when the child is in an environment that is overly stimulating, the child

tries to get out of that environment. The principal stated the school has created a sensory room where there is opportunity for calming. This room is located near to the Grade 5 classroom. This room was referred to by the parties interchangeably as the “sensory room” or the “calming room”.

The teacher stated that when the child was irritated [the child] would start to cry or make noises so loud that both the Grade 5 class and the classes next door were disrupted. On those occasions, the teacher said he would take the child to the “sensory room”, to give the child an opportunity to calm down. The teacher indicated that this behaviour happened every day, approximately three times each day.

The COTA report recommended the use of a weighted vest or lap snake to provide deep pressure to the body which may help the child to sit for longer periods. The appellant indicated there was no weighted vest at the Public School. However, in cross-examination, the appellant agreed that a weighted vest had been ordered, but it was back-ordered. One was loaned to the school for a period of time. The appellant agreed that there had been an opportunity to try out the weighted vest.

The teacher testified that because the child is so strong, the weighted vest didn't prove to be effective. Instead, with the appellant's permission, he followed the directions given to him by the occupational therapist to actually sit the child on the chair, lock the child's legs in and try to hold the child there for at least two to three minutes at a time, and then get the child up and go back to the chair again. He indicated that it took a long time before it began to help the child, but now it seems to work. While the teacher was doing this, he would stop his class and ask them to read to enable him to assist the SNA with the procedure. The teacher said that the appellant wanted the child to stay in the classroom, so he was trying everything he could to make that happen.

A “move and sit cushion” was also recommended by the COTA and implemented as was the use of slow rocking and bear hugs to help calm the child and to provide the child with a form of reassuring body contact known as “deep pressure”. The appellant indicated that the teacher implemented this. Ms. C agreed with Ms. Bowlby during cross-examination that the principal also implemented bear hugs to calm the child.

The COTA report also recommended that a visual schedule be placed in the classroom. The appellant indicated that she made one and brought it in to the class, but she was unsure if it had been used. Ms. Bowlby cross-examined the family support co-ordinator about the visual schedule. The family support co-ordinator indicated that she did not see one, and if she “didn't see it, then it couldn't have been very clear for the child”.

The COTA report further recommended that a defined area be provided for the child to sit on when on the carpet. The appellant indicated that this

recommendation had not been implemented. Ms. Bowlby, through cross-examination, determined that there was no carpet in the classroom for this to be implemented and that students in Grade 5 do not participate in circle time or story time.

Another recommendation in the COTA report was made by Ms. Baird, a speech language pathologist. She recommended that the child should be provided with a choice of two favourite activities following the completion of a task so that the child may choose a reward. The child should make the choice by selecting the picture or pictograph. The appellant indicated that this had not been implemented.

The teacher testified that on a regular basis, the child ran around the classroom and all teaching in the classroom had to stop. The SNA and the classroom teacher literally chased the child to catch the child, then calmed the child down and took the child to the sensory room. The teacher testified that on these occasions, the entire learning process and teaching were disrupted for the class.

The testimony of the teacher and the principal indicated that the calming room was used very frequently. The appellant indicated that she brought the child to school usually fifteen minutes after the rest of the school assembled so that the environment would be calmer for the child upon arrival.

3. General Behaviours and Social Interactions

The teacher described the child as a twelve-year old who is very small and very happy. He said that the child responds to the child's name but does not respond to any other words. The child does not have any aggressive behaviours but the child also does not interact with other students. The child is unable to feed independently and does not dress independently. The child is not able to indicate wants or needs by gesturing. The child cannot be left without supervision.

The family support co-ordinator indicated that transitioning was difficult for the child. The family support co-ordinator said that the child comes to school around 9:00 a.m., which is fifteen minutes after school has started. This strategy is used to provide the child with a quiet environment for entering school.

She also stated that she did not observe any type of interaction between the child and the children in the class on the day of her visit. The principal indicated that the child doesn't engage with other students. She said the child does have a couple of "buddies" who have kindred spirits and will spend time with the child. The teacher stated that most of the students in the room have known the child for seven years so they accept the child. Others are not as receptive or warm.

The teacher indicated that the child is unable to use pencils and crayons independently and the longest period he has observed the child pay attention is about five minutes. This is not consistent and it depends on the activity and on the time of the day. He said that the child is now able to sit in a chair for approximately five to ten minutes.

The teacher stated that although the child is small, the child is the strongest child in Grade 5. When the child's going towards the door the child will push and pull anyone who tries to intervene. He stated that four of the SNAs who have worked with the child have complained of strained shoulder muscles.

4. Communications among the School, Community Agencies and the Parent.

The appellant indicated that to the best of her knowledge there was limited communication between the school and Bloorview Macmillan to ensure that the recommendations made by Bloorview Macmillan were implemented in the school. Specific areas of concern identified by Bloorview Macmillan were communication, self-regulation skills, and social skills.

During cross-examination the appellant indicated that she preferred to stay away from the school because she had a concern that the child may get upset if the child sees her while the child is at school. She agreed with Ms. Bowlby that the school and the home have tried to work together and have had regular meetings.

The principal stated that she had met with the appellant and the teacher many times. She met quite a few times a week with the appellant and often talked about the child's needs.

Ms. Bowlby questioned the appellant about reports that she had from Bloorview Macmillan that she has not shared with the school. The appellant said that she is finding that when the reports are provided to the school, they are not followed. She decided not to provide them with a copy of the reports after 2000. The appellant indicated that she could not remember if there are other doctors that she sees for the child.

5. Training, In-Service, Support

The principal stated that the school had a least a dozen SNAs between September to December, 2005. The job is physically demanding. She said that when new SNAs do come to her school to assist the child, she contacts the PDD autism team to come in and shadow the SNA while working with the child. That way they can see whether they have any concerns and can offer suggestions for working more effectively with the child.

During the course of the Grade 5 year, a number of SNAs worked with the child. The appellant indicated that maybe six or seven might have worked

with the child. The teacher, however, said that there were four assistants who have worked with the child.

The appellant indicated that she and Mr. C. sent an Addendum dated May 7, 2004 to the school. She had recommended that a single person with knowledge of autism be assigned as an SNA to the child throughout the school day. This request was made because the child had two SNAs at this time and each one worked differently with the child. The appellant said that routine is important for people with autism.

The principal testified that she has observed the child becoming more agitated when there were so many SNAs. She said that the child is much better when the child is with the same person.

The family support co-ordinator described how Mr. McMahon, a behaviour services consultant with Community Living, came into the school to observe the support staff for the child. She stated that in Mr. McMahon's opinion, the SNA in the afternoon was doing an excellent job, while the morning SNA did not have the same level of expertise. Mr. McMahon recommended that the school build on the good things that were already happening at the time. He also had concerns about the lunchroom assistant.

The principal stated that hiring staff who are knowledgeable about autism has been difficult. She noted that there has been a high turnover of support staff over the last couple of years. The teacher indicated that three of the four SNAs have had extensive training with autism. The current SNA continues to take courses and in particular, is currently taking a course about autism.

6. Placement

The appellant stated that she believed in integration for her child from the beginning. The benefit of an integrated setting, she explained, is that there are typical children in such a setting. She said it gives those students an opportunity to familiarize themselves with somebody such as her child who has challenges and to learn that the world is not perfect. She also stated that the child has always been in integrated settings, from the time the child was in daycare.

During the child's Grade 4 and Grade 5 years, the appellant visited alternative school placements. The appellant indicated that when she visited the various special education settings she was not told any specific information about how these programs would assist the child. During cross examination the appellant agreed that the co-ordinator of special education for the TDSB made it clear that if the child were placed in a special education setting, there would still be as much integration as possible with respect to non-exceptional students.

At the IPRC, The appellant said that the IPRC concluded that the child's needs would be better served in a special education class. The IPRC also said that the teacher and the SNA associated with the special class would have more skills that would be beneficial for the child. It was also the view of the IPRC, that a small class would be better for the child.

The appellant indicated that modification to the regular classroom curriculum was necessary to accommodate the child. She said that the regular curriculum needs to be broken down into smaller steps and the PECS should be used so that the child could visually see what is expected.

A note from Mr.C. and the appellant dated May 2004, stated that the child relies heavily on routine and familiarity. They recommended that a single person with knowledge of autism be assigned as an SNA to the child throughout the school day.

The family support co-ordinator stated that she was told that a special education classroom would best meet the child's needs as an autistic pupil, because the teachers in the special education programs would have more expertise in special education, though not necessarily in autism.

The teacher stated that when the child moves into Grade 6, the child will be moving to a middle school with other students who will not have known the child for years, as many of the child's classmates have, and he is concerned that they will be less tolerant of the child's behaviours. He also noted that students of that age are moving into puberty, and will also be in an environment with a more challenging curriculum – the Grade 6 curriculum - which must be covered. The teacher indicated that he had taken many steps to encourage other students to work and play together with the child. The teacher went on to say that despite all his efforts to support the child's social interactions with peers, students of that age like to play soccer and other games that the child cannot play, so instead he relies on cooperative games wherever possible to include the child. In cross-examination the teacher told of his discussions with the autism team concerning strategies for interaction with the child. He has followed the suggestions made but the child has not responded.

Ms. Bowlby took the teacher through the child's daily timetable. The day consisted of large periods of time focusing on toileting habits. The teacher stated that it would not be possible for the child to spend the full day in a regular Grade 6 class. He stated it would be a lot different in a middle school environment as there is less space in the classrooms and many of the students will not know the child. The teacher said that the number of students and the noise in a regular classroom would not work for the child.

The teacher indicated that the child prefers the sensory room. This room faces the road and the child enjoys watching the road and the cars.

The teacher indicated that the current placement is good for the child in so far as the child is around other kids, but the child clearly needs to be in a learning environment where the child can get the stimulation that the child needs. The teacher said that being in any regular classroom full time is not in the child's best interests because the child cannot communicate with the other children. The teacher said the environment in the regular class is over stimulating and the child reacts in a negative way. The effect of the child's reaction is that it often takes up most of the teacher's time just to manage the child's behaviours. The teacher observed that this, in turn, takes away from the other students' learning as his time is spent managing the child.

The teacher described how his class does a language program. He gave an example of students working on a media unit assignment in which they were asked to write an advertisement in an objective way. In response to Ms. Bowlby, he said there was no way to modify this to make it accessible for the child. Instead, during the time the child's classmates worked on the media assignment the child did an ABC puzzle placing letters in the right places.

The teacher was asked about the May 9, 2006 report card. He indicated that the expectations he used while he prepared the child's report card, were the Kindergarten expectations. He stated that the child was functioning below the Kindergarten level and that he had to modify that as well. The principal concurred that the child's functioning level was not at a junior kindergarten level.

When asked what placement would suit the child, the teacher said, that he thought the best placement for the child would be an autistic/developmental disability class, with the possibility of integration in programs that are known to be non-threatening. Integration with the regular class in programs such as physical education or music would be useful. The teacher also indicated that the child could not develop life skills in a regular classroom placement.

The teacher was asked if he had seen any indication in the child's behaviour that would suggest that the child has benefited from having the opportunity to see other children and to model their behaviour. The teacher said no. The teacher said that he has known the child now for four years and that he does not think the child has benefited from having the opportunity to model after other children.

The teacher was also asked if it is possible for the child to spend a full day in a regular Grade 5 class and the teacher responded "no". He added that the situation would be worse in a middle school.

The principal indicated that the child's current placement in a regular class is not working for the child. The principal said that the child needs to be in a small program, a self-contained class with opportunities for interaction with students outside of that class. The child needs intense support in a small group setting.

The principal described a middle school as one with grades 6, 7 and 8 and is approximately twice the size of the school that the child is presently attending. The school population comes from five different feeder schools and the students range in age from eleven to thirteen, an age when many are entering puberty. The classes work on a rotary system and students would probably have six different teachers with most subjects being taught by a number of different teachers. The principal indicated her concern for the child going into that environment. She observed that in addition to the challenges the child would face dealing with such an array of different teachers and classes, matters such as toileting would also be a significant issue in this type of setting.

The co-ordinator of special education for TDSB, suggested two possible schools that would be more suitable to meet the child's needs at this time. The programs she described included small class size, specialized teachers and a specialized program in combination with opportunities for integration. She stated that she is concerned that if the child were to go into a regular class in a middle school that the teachers would not be trained or have specialized knowledge to meet the child's needs. She restated for Ms. MJ that she prefers a small class with integration opportunities for the child as this is where the child's needs would be best met.

REASONS

There is no dispute regarding the child's identification. Both parties have agreed that the child does not have a communication system.

During the hearing there was considerable evidence given about the child's significant needs. These needs include communication, self-regulation and sensory needs, habit training and the need to have opportunities to model the behaviours of other children in regular classrooms.

It is the Tribunal's view that the child's needs are unique and that the child's combined exceptionality of autism and developmental disability requires some very specific teaching in order to enable the child to experience success and independence.

With respect to the child's communication needs, the reports and assessments provided as evidence consistently indicated that the child could not communicate and was non-verbal. Both parties agreed that the child is non-verbal and that the child needs to learn a strategy to communicate independently.

The evidence has shown that efforts have been made to teach the PECS from the year 2000 to present and yet the child has not yet learned to use it independently nor is the child able to use it as an effective way to communicate with others. The Tribunal notes that the child is at an age where the child must learn to communicate

[the child's] needs independently. It is clear that the child requires consistent intensive help to teach [the child] a communication strategy.

When considering the type of placement that would be best for the child, the Tribunal considered the description of middle schools provided by the teacher and the principal. The Tribunal learned that the Grade 6 class would be on "rotary" which would mean ongoing changes of staff, and considerable movement from class to class each day. This type of environment is directly opposite from the kind of environment that the appellant described that would best meet the child's needs. Also, through the evidence the Tribunal learned that the child is very easily stimulated, that the child has a tendency to run when stimulated and that the child needs to be in a calm environment. A regular class in the middle school would not provide the calm environment that the child needs.

The appellant indicated that she wanted consistency with staff and that she wanted staff that is well trained to deal with autism. A class in the middle school would not provide the consistency that the appellant wanted or that the teacher reported was necessary for the child. The Tribunal believes this is a reasonable request, and every effort should be made to ensure that this happens.

The Tribunal considered the parent's request for an integrated setting. The Tribunal accepts the testimony of the teacher when he said that the regular class with integration is not working for the child. The testimony indicated that the child has been in regular classrooms since the child entered school in 2000. However, the child had limited integration in a Grade 4 class when the child was in a Grade 2 and it was only when the child was in Grade 5 for the first time, that the child was with age-appropriate peers. These integration opportunities for the child have not made a significant difference. Despite the evidence that the child has not shown that the child has benefited from integration, it is the Tribunal's opinion that the child must continue to be integrated into the regular school setting. This integration will make a difference in subtle ways. The Tribunal notes that integration is also consistent with the child's parent's wishes.

The co-ordinator of special education described the special education programs that would meet the child's needs. She demonstrated the importance of the child being in a small class with specific programming. She described the special education classes as classes that included small class size, specialized teachers and a specialized program in combination with opportunities for integration. This co-ordinator has the qualifications and experience in special education to make reliable and appropriate recommendations for students like this child with complex needs.

With respect to habit training, the toileting issues that the child is currently experiencing also will need to be addressed in the middle school. The evidence showed that the child requires a very intense habit-training program to help with toileting needs. Incontinence is a problem, not only in view of embarrassment at the child's age, but also in understanding how a teacher can deal with it when so many other children are in the classroom. As the child advances into a middle school

setting, the complexities in the school will only exacerbate the problems and in the Tribunal's view, this will not be in the child's best interests.

At the outset of the hearing, the Appellant stated that the recommendations made by the COTA had not been implemented by the TDSB. The Tribunal does not agree with the Appellant in this regard, as the testimony indicated that very extensive efforts were being made by the school staff to implement these recommendations. The difficulties arose with the inconsistency in support staffing, the large class size, the responsibilities that the teacher had to all the students in the class, and the child's very complex and challenging needs.

Having reviewed the evidence, it is the belief of the Tribunal that a small special education class will provide a secure and calm environment for the child, while at the same time providing the instructional program that the child needs in order to reach the level of independence of which the child is capable. Life skills are critical to the child at this age and an ability to communicate [the child's] needs is essential. Progress in these two areas can be achieved in a smaller class setting. *E v. Brant County Board of Education, [1997] 1 S.C.R. 241*, pp. 278-279 states that the applicable test in determining the appropriate placement of an exceptional pupil is whether it is in the best interests of the child.

The Tribunal concludes that it is in the child's best interests to be placed in a special education placement, a self contained class that will specifically address his needs. This class combined with opportunities for integration will provide an environment designed to help the child progress and gain independence.

The Tribunal issued the following order on September 5, 2006 to enable the Toronto District School Board and the appellant to begin communications about the placement that has been ordered. The Tribunal informed the parties that the full decision with reasons would be issued shortly thereafter.

ORDER

The Ontario Special Education (English) Tribunal orders the Toronto District School Board to place the child in a self-contained Special Education Class designed in a middle school setting. This placement will include:

- Integration to further develop the child's social skills. These opportunities should occur during non-academic activities to the greatest extent possible, so that the child can interact with other children in the school.
- Direct consistent teaching of an augmentative communication system to help the child learn a system to communicate [the child's] needs independently.

The Tribunal orders the Toronto District School Board to include the parents in selecting the most appropriate placement from the two schools described at the hearing: C.H. Best Public School and Beverly Heights Public School.

Placement is to begin during the week of September 5, 2006.

Marilyn Thain, Chair _____

Uma Madan, Member _____

Noel Williams, Member _____

DATED: OCTOBER, 2, 2006