



IN THE MATTER OF The EDUCATION ACT, R.S.O., 1990 E.2, as amended,  
57(3)

AND IN THE MATTER OF Ontario Regulation 181/98:

AND IN THE MATTER OF The minor child, A. E., Born, 25 July 1988:

BETWEEN

S. and S. E.  
Appellants

AND

HALTON DISTRICT SCHOOL BOARD  
Respondent

Tribunal Members

Donna Gracey	Chair
Dawn Roper	Member

Appearing for the parties:

Mr. David Baker	Counsel for the Appellants
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Mr. Robert Keel	Counsel for the Respondent
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Nadya Tymochenko

Samantha Leach

Bill Wyman	Secretary to the Tribunal
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Thomas A. Sandford	Court Reporter
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**This hearing was for clarification of a decision made September 15<sup>th</sup>, 2003. It was conducted on the 11th Floor, at 2 Carleton Street Toronto, Ontario, on the 17<sup>th</sup> day of August, 2004.**

The Tribunal members have agreed, at the parties' request, to hear arguments requesting a clarification of the decision in this matter, dated September 19, 2003. We proceeded to hear the matter with only two sitting members, as the third member has been hired by the Ministry of Education and therefore excused herself from sitting, in order to avoid the appearance of conflict of interest. Below, is a brief summary of the original decision of September 19, 2003, followed by a summary of the submissions heard on August 17, 2004, and the clarification of our decision.

## **I. ORIGINAL DECISION OF SEPTEMBER 19, 2003**

The parent had requested that the placement for the student be an "Autism" class under clause 31(f) of Regulation 298. The school board requested that the appeal be dismissed.

The Tribunal's decision identified two issues:

"Has the Halton Board of Education provided the student, a student identified with Autism, with an appropriate placement?" and

"Does the Tribunal have the jurisdiction to order a Board to place a student in a class that does not currently exist within their Special Education Plan?"

On the first issue, the Tribunal upheld, in part, the parent's appeal, agreeing with the parent that the Developmental Education Program placement was not an appropriate placement for the student. However, we did not grant the placement remedy requested by the parent, that the student be placed in an "autism" class, "because the range of needs and abilities for children within the Autism Spectrum Disorder is very broad and a class with that name alone might not meet the student's needs".

On the second issue, the matter of jurisdiction, the Tribunal dismissed the school board's motion and allowed the appeal, saying that it is of the opinion that it has jurisdiction to hear the appeal. The Tribunal did not accept the school board's argument that the Tribunal cannot order the Board to place the student in a placement that does not exist within the School Board Special Education Plan and said "In conclusion, the Tribunal has the legislative authority to order the Board to place a child in an appropriate placement even though that placement does not exist within the Board's Special Education Plan". In support of its order, the Tribunal cited R. v. York Region, "it would be contrary to good judgment and irresponsible decision making to order a placement which is not in the best interests of the child." Therefore in the best interests of the student, the Tribunal determined that it had jurisdiction to hear the appeal and dismissed the motion.

The order set out in the decision was as follows:

“The Tribunal orders the Halton District School Board to place the student in a class, identified as ‘Communication’. This is to be a small, separate class where the student’s unique communication needs may be met. The focus of the learning in that class will be on developing language skills and the pragmatics of social interaction.”

There were also a number of recommendations, set out as follows:

“1 a. It is expected that those students identified with Autism who have developed oral language skills will be placed in this class.

b. As well however, there may be other students who have not been identified with Autism, who have language development as a significant learning need, who may also be placed in this class.

c. The Autism Spectrum Disorder team can continue to provide consultation and service to the students in this placement.

2. That during the school year 2003-2004, the student continue to develop social skills and transition skills (comfort in managing the transitions in a secondary school). The Tribunal is of the opinion that when the student has developed transitioning skills and is familiar with that school setting that the student’s anxiety will decrease.

3. It is the opinion of the Tribunal, that given the student’s intellectual potential, the student should receive a school program that will, in years subsequent to 2003-04, allow the student to participate in classes and courses that will help [the student] develop the skills to be an active participant in the community. Co-operative education programs, life skills classes, courses that develop literacy and numeracy, as well as the “Essential Courses” that the Board offers at the secondary level should be considered in the student’s Transition Plan.”

## **II. REQUEST FOR CLARIFICATION**

In June 2004, the parties jointly requested the Tribunal to reconvene the hearing panel to receive submissions from the parties and to consider clarifying the Tribunal’s decision of September 19, 2003. Noting that it was responding to a joint request from the parties, the Tribunal agreed to hear oral submissions from the parties on August 17, 2004

## **Position of the Parents**

Mr. Baker is seeking clarification of several issues. However, his main question appears to be: *“Did the board order that the student was to be placed in a class for students with mixed exceptionalities with a maximum student-teacher ratio of sixteen to one”?*

Within this context, Mr. Baker also raised some sub-issues. The first of these was the identification of the class as “Communication”. Mr Baker believes that in identifying the class as a “Communications Class”, the Tribunal intended to create a class that would meet the needs of a pupil with Autism, and as such, under regulation 298, clause 31 (f), be limited to six pupils. Mr Baker also believes that the class would only be for students who are identified within the exceptionality category of “Communication”.

## **Position of the Board**

Mr. Keel, representing the Halton Board, believes the Tribunal, in its order for a small, separate class identified as “Communication”, focussing on language and the pragmatics of social interaction, was seeking to maintain the status quo for the student. He said that, “we also did not interpret your order as indicating that the student should be placed in a class of mixed exceptionalities with a maximum of sixteen”. Citing the reasons given in the decision, he said that the Tribunal stated that a mixed exceptionalities class of one to sixteen would be too large, and that the cluster group of twenty-five would not be appropriate. At the same time, he said that the order was not for an Autism class with a ratio of one to six. He believes that it was the intent of the Tribunal to maintain the small class in which the student was placed at that time. The students in the class had similar learning profiles, and the focus was on those profiles rather than their identification.

## **III. CLARIFICATION**

### **The Order**

The Tribunal did not order the creation of a multi-exceptionality class, nor did it order an Autism class. We agreed with the parents that the Developmental Education program was not an appropriate placement for the student, and that the multi-exceptionality class originally offered was too large. Because of the child’s difficulty with transitions, and the child’s anxiety disorder, we stated in the reasons that “the child needs a small group, segregated setting at this point in the child’s education. However for the student to learn the pragmatics of language and social interaction, or be successful in society, the child will need to learn those skills in a small class setting where the child will have the opportunity to practise these skills with peers of [the child’s] intellectual capability”.

We said that the class created by the Halton Board, and identified as the satellite class, seemed, according to witnesses, to be meeting the student's needs. While that class had only six students, the Tribunal did not in its order say that it could not be any larger, or that it had to comply with the size requirements of an Autism class. We did not explicitly define small, but used the descriptors "small, separate". We did say that sixteen was too large, and in describing the satellite program as "meeting the student's needs", it should be understood that, in this context, small would mean not much larger than it was in the Spring of 2003 at the time of the hearing.

### **The Recommendations**

In support of its decision and order the Tribunal made several recommendations on the nature of the class and the program for the student.

Recommendation 1 a. "It is expected that those students identified with Autism who have developed oral language skills will be placed in this class."

Recommendation 1 b. "As well however, there may be other students who have not been identified with Autism, who have language development as a significant learning need, who may also be placed in this class."

In making these recommendations the intent of the Tribunal was to focus on student learning needs, not on exceptionalities. The order was quite specific about this in saying, "The focus of the learning in that class will be on developing language skills and the pragmatics of social interaction." The name of the class was selected to reflect this focus; it was not our intention to identify a class for a specific exceptionality as identified in Regulation 298.

Recommendation 1 b indicates that it is not only for students who have been identified with Autism, nor must they be identified within the exceptionality category of "Communication". However, in recommending that students identified with exceptionalities other than communication could be placed in this class, it was not our intention to create a mixed-exceptionality class as defined by the Ministry in Regulation 298, clause 31 (g), with a student staff ratio of sixteen to one. It is a class for students with similar skills and learning needs, and similar levels of intellectual capacity.

Recommendation 2 indicates that the student will need time in the small group setting to develop the social and transitioning skills that will enable the student to manage the transitions in a secondary school.

## **Conclusion**

The Tribunal hopes that this clarification will assist both parties in resolving any differences, that may exist between them and will be of assistance in planning for the future of the student.