



Between

A, Appellant

And

Halton District School Board, Respondent

Tribunal Members:

Marilyn Thain	Chair
Sharon Carson	Member
Peter Cassel	Member

Appearances:

A	Parent, On behalf of minor child
H	Parent Advocate
N	Parent Advocate

Robert G. Keel and Nadia Tymochenko	Counsel for the Halton District School Board
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Secretary: Mr. Bill Wyman

The hearing was held at The Holiday Inn, Oakville, Ontario, L6H 6K8 on November 27, 28, & 29, 2001

Introduction

The Special Education Tribunal is guided by the Education Act R.S.O. 1990, c.E.2, section 57, the regulations made there under, and the Statutory Powers and Procedure Act. Under section 57 of the Education Act, the Special Education Tribunal 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 (of the pupil).

The appellant requested an appeal to the Special Education (English) Tribunal. On August 18, 2001, the appellant filed her grounds for appealing the decision of the IPRC of February 22, 2001, that placed her child in a mixed exceptionalities class with a maximum student enrollment of up to sixteen pupils, as permitted by clause 31(g) of Regulation 298. The following outlines the subsequent proceedings.

1. The Special Education Tribunal conducted a preliminary hearing on September 29, 2001 to hear two preliminary issues:

- a) The first issue, brought forward by Mr. Keel, Counsel for the Halton District School Board, was to determine whether the Special Education Tribunal had the jurisdiction to hear the matter. The Board argued that the appeal dealt with program issues and not placement. The Board argued that the placement issue is an issue with respect to the Special Education Plan, and that is agreed to between the Board and the Ministry of Education.

The Tribunal accepted the appellant's argument that a dispute regarding placement did exist, and that within the context of section 57 of the *Education Act*, a parent may appeal to a Special Education Tribunal for a hearing in respect of identification or placement. The Tribunal satisfied itself that it had the jurisdiction to hear the matter.

- b) The second was 'stay of placement' for the student, which was requested by the appellant. The Tribunal determined that the evidence presented was insufficient to make a decision at that time.
2. On November 08, 2001, a pre-hearing teleconference was held to deal with the application brought to the Tribunal by Mr. Keel, Counsel for the Halton District School Board to 'stay the proceedings'. This application was a direct result of the Tribunal's decision to take jurisdiction to hear the matter. Mr. Keel presented the draft notice of application for judicial

review. After hearing the arguments from both parties, the Tribunal decided not to grant a stay of the hearing.

3. On November 27,28 and 29, 2001, the Special Education Tribunal reconvened. The hearing was an open hearing.

The Tribunal wishes to compliment the appellant for her thorough presentation, despite the fact that she was unrepresented. It was noted that this hearing was not unduly encumbered by legal technicalities, and appreciation was extended to Mr. Keel, Counsel for the Halton District School Board.

As a preliminary matter, both parties wanted to clarify what was actually under appeal before this Tribunal. It was agreed that the issue before the Tribunal was the appeal of the student's placement in grade nine, during the school year 2001-2002.

The student's present placement is at a Secondary School where the student attends the Satellite Program and is in grade nine. This program is set up to accommodate a maximum of sixteen students in a self-contained setting, whose primary exceptionality is a learning disability.

Witnesses

The following is the listing of witnesses as presented by each of the parties. Each party had nine witnesses.

For the Appellant

The student
The appellant
Dr. Stephen Barker
Mr. B. Secondary School Teacher
Ms. I
G
Dr. Catherine Smith
Peter Gooch
Bruce Drewett

For the Respondent

Brenda Kearney
Carla Kisko
Jane Heinzl
Lillian Hall
Lillian Saar
Steve Fraser
Debra Wood
Teacher
Ms. G.

Opening Statement by the Appellant

The appellant stated that she disagreed with the Identification Placement and Review Committee (IPRC) decision of February 22, 2001 that placed her child in a self-contained mixed exceptionalities class, called a Satellite Program, and located in a secondary school. She said the focus of this hearing was “[her child’s] current placement”, as well as “[the student’s] current strengths and needs.” (Transcript, Vol. 1, p. 23, lines 15-1)

The remedies sought were:

- Placement in a class consistent with Regulation 298, clause 31(1)(a) [a class for severely learning disabled pupils, with a maximum class size of eight] with like peers, until it is no longer necessary to meet [the student’s] needs, as determined by a variety of psychological and educational assessments.
- Appropriate programming, including intensive remediation in both reading and mathematics, which would mean that at least seventy-five percent of the student’s day would be spent in a self-contained setting which will allow for a self-paced approach to all academic subjects, as well as remediation in the student’s area of need
- Individual assistance with support by staff with qualifications to meet the student’s strengths and needs in all self-contained and integrated settings.
- A teacher qualified in research-based, direct, explicit, systematic, multi-sensory instruction to provide remediation in reading
- Costs as per Tab X of Exhibit 10.
(Transcript, Vol. 1, p. 28,29)

She claimed that the Halton DSB erred in its decision to place the student in a mixed exceptionality class, as the placement was not consistent with the Halton District School Board’s Special Education Plan. The appellant said that the Supreme Court Ruling of the *E* decision (Exhibit 5) stated that “*decisions must be guided by the best interests of the child.*” She continued, that the student is a severely learning disabled child who requires a small class placement with a remedial component, and appropriate accommodations, and, that the placement in a class operating under Regulation 298, clause 31(g) is not appropriate nor in the student’s best interests.

Opening Statement by the Respondent

Mr. Keel indicated that, “*in order for the Board to deliver a 31(a) class, and for it to be funded through the Intensive Support Amount (ISA) process, it would have to be a curriculum-modified class with no credits.*” (Transcript, Volume 1, p. 30, lines 6-9) He stated that it is not in the student’s best interests to be in a non-credit course or non-diploma granting program.

He said that in previous submissions, the Board had indicated that it had been offering classes that had a maximum enrollment of eight students. These were not classes operating under Regulation 298, clause 31(a) classes; they had an eight to one ratio, primarily learning disability (LD), with some mixed exceptionalities. He continued that, as a result of funding cuts, the Board was required to go to a sixteen to one student-teacher ratio model, or eliminate the program, and provide only integrated resource support.

In respect to the class size, he indicated, that at the present time, the class has approximately seven students. He stated that the Board has been holding back on placements, waiting for the decision of this Tribunal. If the Tribunal decides that the Board should be providing a clause 31(a) class, or a class of a maximum of eight students, then that decision would impact other students in the Board.

Mr. Keel stated that the Tribunal couldn’t focus on the best interests of the student, for this would prejudice the other students. He believed that to make such a decision would not only relate to this student, but it would also impact on a number of other students in a number of different areas of the Board. He continued that it would have significant ramifications throughout the Board. He said that the placement issue is an issue with respect to the Special Education Plan, and that the Plan is agreed to between the Board and the Ministry of Education. He stated that it is the Board’s position that it did not operate a Regulation 298, clause 31(a) class. If the Tribunal were to order a Regulation 298, clause 31(a), it would place the Board in a more significant deficit than it is already in, in the special education area. This would be contrary to the *Education Act*.

Mr. Keel stated that on the pedagogical side, it’s not in the student’s best interests to be in a Regulation 298, clause 31(a) class, and that the placement as presently structured is serving the student’s needs. Mr. Keel stated that a class of only eight students at a secondary level would not function well for every student, and would not provide for discussion or teamwork. He also stated that the timetabling in a secondary school was also problematic for a class of only eight students.

Summary of the Appellants' Witnesses

- **The Student**

The student is the child of the appellant. The student discussed the [student's] interests and hobbies, and the [student's] difficulties with writing at school. The student explained that the [student] did not use the computer technologies that are available, as the student found it to be embarrassing. The student wishes to graduate from high school and become a welder or mechanic or "*something like that.*" The need to use computer technology that was similar both at home and at school was explored in some detail. The student indicated the desire to go somewhere private to work on the computer in school.

- **The Appellant**

The appellant, presented the case and served as a witness. She reviewed the history of her child's schooling. She stated that her child had difficulties in school as soon as her child entered kindergarten, and as a result, the student's program required modifications and remediation. By grade three the student was identified as an exceptional pupil – communication, learning disabled, and the student was provided with some small group assistance. The grade five Report Card indicated that the student's placement was resource support in a cluster group at a School. In grade six the Report Card indicated that the student had modified curriculum in English, Mathematics, Science, Technology and Social Studies. The Individual Education Plan (IEP) developed for June 2000, during the student's grade seven year, showed that the student's reading remained at a grade four level, writing at grade three, and oral communication at grade seven. This IEP also indicated that the curriculum was modified fifty one to eighty percent.

The Identification Placement and Review Committee (IPRC) documentation for the year 1999 - 2000 (grade seven) indicated that the student's placement was self-contained. The IPRC documentation of February 22, 2001 indicated no change of identification or placement, and the placement was then to remain as self-contained. The IPRC documentation dated April 09, 2001 indicated no change of identification or placement, but there would be a change of a school or class location. The placement was to be self-contained.

The appellant stated that assessment results showed the student's strengths to be the student's listening skills and oral communication skills. Reading, writing and mathematical skills were below grade level. She stated that the student needs highly differentiated programming to meet the student's needs. Some examples she gave included voice-to-text software, taped tests, handouts scanned, a scribe and a reader. The appellant said an appropriate placement would be in a very small group of research-based, multi-sensory reading

programming, which would include all cognitive skills and generalizations. In her opinion, the only choice is a self-contained class, with a teacher-pupil ratio of eight to one.

The appellant said that the IPRC decision of February 22, 2001 erred, as it did not place the student in a class consistent with its Special Education Plan. She said that the Halton District School Board's Special Education Plan before May 2001, had classes under Regulation 298, clause 31(a). She said that mixed exceptionality classes did not appear in the School Board's plan until May of this year [2001]. (Transcript, Vol. 1, p. 112, lines 15-17) She continued, therefore the IPRC decision was inconsistent with the plan and this is in direct contravention of Regulation 181, clause 12(2).

The appellant stated that the Appeal Board failed to consider Regulation 298, clause 31(a), which makes provisions for severely learning disabled children. Also, the appeal board erred as it failed to consider the reports of Dr. S. Barker and Dr. C. Smith, as Dr. Smith's report clearly stated "*a small class is a place that will best meet [the student's] needs*". (Transcript, Vol. 1, page 113, lines 22, 23)

The appellant explained that the student's need statements, as listed in the IPRC decision of February 22, 2001, were changed on the most recent Individual Education Plan (IEP) completed in November. The appellant contended that the student's needs really had not changed, they remained the same, and the IEP should be a reflection of the needs as identified by an IPRC. The appellant informed the Tribunal that she had inquired of the student's teacher, as to why the statement of need had been changed. The appellant stated that the teacher's response was "*that the Satellite Program could not meet [the student's] needs as identified in the IPRC, and that [the teacher] had been given direction to change the statements.*" (Transcript, Vol. 1, p. 114, lines 18-21)

The appellant indicated that the student would like to take a skilled trade. She is however concerned, as admission requirements to Sheridan College indicate that the student would need an Ontario Secondary School Diploma with advanced Mathematics, and two senior English credits. She does not see the student achieving this goal, if the student does not have the appropriate placement in secondary school.

The appellant acknowledged that there were seven children in the student's current mixed exceptionalities class. She was concerned that there were no guarantees that the class size would remain eight to one or less. She noted that the student is struggling, and the student needs to be protected. A placement in a class of sixteen to one does not protect the student. A placement with an eight to one ratio will.

Mr. Keel cross-examined the appellant concerning the Board's acceptance of the Special Education Plan. He indicated, that a letter of January 20, 2001 (Tab C, Exhibit 11), from the Ministry of Education, requested that the Board clarify in its plan, the change from self-contained classes to classes of different exceptionalities. Mr. Keel stated his understanding that, Regulation 298, clause 31(a) class, does not afford students in the class an opportunity to gain credits.

The appellant agreed that the student would have to be in a program where the student earned credits, but disagreed with Mr. Keel's statement that a student who is eligible for Intensive Support Amount funding, and is in a class pursuant to Regulation 298, 31(a), would not have the opportunity to earn credits. In response, the appellant stated that her understanding was that the principal has the discretion to grant credits. In response to further questions by Mr. Keel, the appellant agreed that she assumed a Regulation 298, clause 31(a) class would offer credits.

The appellant was referred to Dr. S. Barker's report that had a recommendation about a specific reading program. The appellant indicated that she was prepared to consider implementation of this program recommendation outside of the school.

The advocate for the appellant re-examined the appellant. The appellant agreed that at the time of the appeal in February 2001, she was not aware that the Halton District School Board's Special Education Plan was being changed to indicate that the former learning disability classes, which had an eight to one student-teacher ratio, were to become sixteen to one, and would be mixed exceptionality classes. The appellant added, that no one had suggested that a student needed to be ISA eligible to be placed in a self-contained class. The appellant stated that no one had suggested that students in a self-contained class under Regulation 298, clause 31(a) would not be eligible to receive high school credits.

- **Dr. Stephen Barker**

Dr. Stephen David Barker, a registered psychologist, was presented as an expert witness. Dr. Barker was asked about the procedures used for the administration of the tests, and he indicated that the tests were appropriately administered. The appellant had hired Dr. Barker privately to conduct an intellectual assessment on her child - the student. Dr. Barker's associate Dr. Cathy Smith administered the test in November/December 1999. Dr. Barker stated the assessment included an evaluation of the current situation based on a review of the student's school record that included the report cards and the IEP. He continued that the student's report cards and Individual Education Plan (IEP) consistently reflected a child who is struggling in all academic areas. Dr. Barker reported that the student has severe learning disabilities in all basic academic areas. (Exhibit10,

Tab C-24) Mr. Barker noted that the test results indicated that the student's working memory fell at the fifth percentile, which would indicate that the student would have difficulty with processing information, and the student would therefore have difficulty carrying out very complex academic demands. He also stated that the student's profile is suggestive of significant difficulties across all areas of underlying reading development. He stated that children with this severity of problems require highly differentiated programming, intensive support, and very sustained long-term direct instruction to deal with the underlying deficits.

Under cross-examination by Mr. Keel, Dr. Barker agreed that the student should be in a program that would allow the student to move to college. He indicated that his suggestion in his report about a specific reading program was another kind of program, to help the student with the student's reading difficulties, and that it could be provided by the student's parents. He agreed that the student's goal of a skilled trade in a college program was realistic. He concluded that the student has average to high average cognitive ability.

The appellant re-examined Dr. Barker and asked if he would characterize the student as a student with a severe learning disability. Dr. Barker replied "yes". When asked if he thought the student's needs could be met in a class with a pupil teacher ratio of sixteen to one, he stated that this was hard to determine. He stated that the more students there are in the class, the more difficult it would be to spend the time and attention with the student, which is what the student needs. He indicated that the critical variable is a highly trained teacher who understands the necessary teaching approaches, and has the time to work with the student daily, to not only help the student acquire the skills but also to implement the skills.

Mr. Keel in cross-examination asked Dr. Barker about the recommendations that were made on the assessment report, and in particular the last one referring to a specific research based reading program. Dr. Barker indicated that the intent of that recommendation was that the program would be delivered outside of the Board.

During re-examination, Dr. Barker characterized the student as a student with a severe learning disability.

- **Mr. B. Secondary school teacher**

Mr. B is a secondary school teacher with the Halton District School Board. Mr. B stated that he was the student's grade nine English teacher, and was part of the Satellite Program [this is in reference to the student's current placement]. He reported there were seven students in the Satellite Class for English, and that all were learning disabled. The student's mid-term mark is sixty-one in English, as

indicated on the student's report. Mr. B reported that the student is significantly below the grade nine provincial expectations in reading and writing independently

Mr. B reported that the student needed strong direction and supervision; he said the student needed help to get started working on assignments. Mr. B told about the many strategies he uses to help the student. He stated that he reads over the homework assignments with the student, but the appellant indicated that because of the student's memory difficulties the student would have difficulty completing such assignments. Mr. B indicated that the student does not use speech-detect software in the class and that he understood that the student was embarrassed about using it. He stated that he had no input into the development of the IEP.

During cross-examination by Mr. Keel, Mr. B stated that there was an instructional assistant in the class. Mr. B indicated that a scribe, and extra time for tests are possible.

On re-examination the appellant asked Mr. B to define the term modification and accommodation. He stated that modification changes the structure of the program, whereas accommodation is when a student uses alternative means to achieve an acceptable result, for example technology.

- **Ms. I**

Ms. I is a teacher at the Secondary School. She stated that she teaches the student Visual Arts in an integrated class, with thirty-one students, and that it is not part of the Satellite Program. Ms. I indicated that the student's present mark is forty and this mark reflects the fact that the student has not handed in a couple of assignments. Ms. I outlined in detail the art assignments and assessment methods that she uses in the class. She stated that she does not have an instructional assistant in the class, but she does have a peer helper come for three days of the week to help with the class. The student has an art class every day.

Ms. I reported that she did not have formal special education qualifications. She indicated that she has met with the special education staff in the school to discuss the IEP and, to seek assistance from them in order to help the student.

Ms. I indicated on the student's mid-term report that the student needs to take more responsibility for the student's work. The student also needs to take advantage of the help that is available. She stated that she offers help at lunch and after school to the student. Although the student is taking the bus to and from school, the student could be available at lunch, but the student does not seek help. She went on to state that if the student started to take work home and

complete the work and if the student makes an effort to bring in the assignments, then, the student would be successful.

During cross-examination by Mr. Keel, Ms. I outlined strategies that are being used to assist the student to be successful in visual arts. She stated that she gives the student more time to complete the assignments, and she provides a scribe for the student for tests. She indicated that the student does not access the technology that is available, such as the scanner. She stated that she uses strategies to help the student with organization.

During the appellant re-examination, Ms. I admitted that she had not read Dr. Barker's report, and therefore was unfamiliar with the findings. When asked about the computer equipment that had been purchased for the student, she indicated that it was not located in her classroom, so when the student needs it to support learning, the student must use it during lunch time to do scanning for the art class. Ms. I also indicated that, if necessary, she would be willing to scan material that the student was unable to read.

- **Ms. Tanya Grigor**

Ms. G is a science teacher at the Secondary School. She stated that she has special education part one qualifications. There are seven students in the Science class that is part of the Satellite Program, and the student's mark is 65. Ms. G listed a number of strategies that she uses to assist the student with organization. Ms. G stated that she has an educational assistant in her class who will scribe for the student during testing times. She indicated that there is a difference in the student's answers when the student has a scribe. She added that she has seven students in her class right now, and that it would be more difficult to program for the students if there were sixteen in the class.

During cross-examination, Ms. G restated the organizational strategies she uses with the whole class, and with this student specifically. Ms. G added that the student is very good with the student's hands, and the student is very responsible.

The appellant, during re-examination, asked Ms. G of her knowledge of the medication that the student takes. She stated that she knew the student was on medication, but did not know what effects the medication would have on the student completing homework.

- **Dr. Catherine Smith**

Dr. Catherine Smith is a psychological educational consultant in private practice, and was presented as an expert witness. She stated that her studies focused on students with learning disabilities and attention deficit disorder. She indicated that most students with attention deficit disorder have time management

problems. Dr. Smith added that learning disabled children are consistently inconsistent.

The appellant directed Dr. Smith to the assessment from Dr. Barker (Exhibit 10, Tab C). Dr. Smith stated that the student's ability to stay focused while being assessed suggests that in a situation where it is one to one, very quiet and distraction free, that the student is able to maintain focus exceptionally well.

The appellant directed Dr. Smith to look at Exhibit 10 Tab A, the mid-term report card, and asked her to comment on it. Dr. Smith responded that the comments on it were very consistent with a child with Attention Deficit Disorder (ADD), who is not getting the structured support required to get assignments done.

The appellant directed Dr. Smith to Exhibit 10, Tab U to look at the suggested timetable prepared by the appellant. Dr. Smith stated that the suggested timetable would certainly go a long way toward meeting the needs of the student.

Mr. Keel began his cross-examination by posing questions concerning the suggested timetable. During Mr. Keel's cross-examination, Dr. Smith stated she had not been involved in any meetings with the teachers or principal. Mr. Keel pursued the distinction of "*won't do something*" versus "*can't do something*". Dr. Smith responded that the student was extremely co-operative in the assessment setting, and in other settings where the student is able to do the work, and that motivation is not a general problem for the student.

During re-examination by the appellant, Dr. Smith stated that she did not consider a class of sixteen to one, a small class.

- **Mr. Peter Gooch**

Mr. Gooch is Director for the Finance Branch of the Ministry of Education (acting Director at the time of the hearing). Mr. Gooch described the funding model for special education in Ontario. He stated that the structure of funding for students is quite complicated. He provided an overview of each of the grants, and he described how a school board could use these funds.

He described the Intensive Support Amount (ISA) as a grant where school boards make claims about student files that meet eligibility criteria. The boards receive funding for each eligible file, but the funding is not attached to a specific student.

Ms. Nichols (advocate for the appellant) asked Mr. Gooch to describe how self-contained special education classes are funded under the funding formula. He indicated that the funding is not dependent on whether a student is in a self-contained program or in an integrated setting. He stated "*that is not the intent of the Ministry to have the ISA Profiles replace the definitions of exceptionalities, or to eliminate exceptionality specific programs and services from non ISA eligible*

students.” He continued, “*The Ministry does not expect school Boards to make decisions about programs on the basis of the funding formula*”. (Transcript, Vol. 1, page 254, lines 2,3)

- **Mr. Bruce Drewitt**

Mr. Bruce Drewitt is Acting Manager, Special Education Policy and Program Unit, Special Education Project, Ministry of Education.

Ms. Nichols asked Mr. Drewitt about paragraph 170 (1) 7 of the Education Act. Mr. Drewitt stated that this section “*indicates that school boards are expected to provide special education programs and services that are appropriate to meeting the needs of individual exceptional pupils.*” (Transcript, Vol. 1, p.258, lines 23-25; p. 259, lines 1-3) He continued, “*We would expect that the student be placed in a program with appropriate services to meet the needs as they are set out [by the Identification Placement Review Committee – IPRC].*” (Transcript, Vol.1, page 269, lines 10-13)

Mr. Drewitt was questioned about Regulations and Policies concerning Special Education. He indicated that Policy Program Memorandum, Number 8, 1982 describes students with moderate forms of disabilities, and students with severe forms of learning disabilities, and it remains in effect until revoked.

Ms. Nichols asked Mr. Drewitt to describe the role of the Ministry of Education in receiving and responding to the Special Education Plan, once a school board makes its submission. Mr. Drewitt stated, “*the Ministry has not been in the business of approving plans*”. (Transcript, Vol. 1, p.262, lines 14-17) He further stated, the “*Ministry’s review of the plan is to try to ensure that the programs and services that have been set out on a system-wide basis should be able to meet the needs of pupils within the board.*” (Transcript, Vol. 1, p.263, lines 6-11)

Ms. Nichols asked Mr. Drewitt to clarify the statement that had been made earlier by Mr. Keel, that any students who may be in a self-contained class, organized under Regulation 298, clause 31(a), at no time would be working towards high school credits and the high school graduation diploma. Mr. Drewitt indicated that he knows of no statement in the Ontario Secondary School Policy that provides such a direction to boards. He stated, “*in the Secondary School Policy, principals are to make such a determination on an individual basis.*” (Transcript, Vol. 1, page 268, lines 23-25; p.269, lines 1-3)

Mr. Drewitt also indicated that he knew of no intent of the Ministry to have the ISA profiles replace the definitions of exceptionalities, or to eliminate exceptionality specific programs and services for those students who are non ISA eligible.

When cross-examined by Mr. Keel, Mr. Drewitt indicated that the Ministry of Education would expect the Board to put together a plan that services the needs

of the students within the region, in consultation with its Special Education Advisory Committee (SEAC).

Ms. Nichols in her re-examination had Mr. Drewett confirm that there is no intent to have self-contained classes under clause 31(a) of Regulation 298, only for ISA eligible students.

Summary of Respondent's Witnesses

- **Ms. Brenda Kearney**

Ms. Kearney is Superintendent of Special Education for the Halton DSB.

Ms. Kearney explained that when the Satellite Program was originally developed in 1986, it was a five-year secondary program. The 1986 Special Education Plan stated that, "*some students at the secondary level are identified as having severe learning disabilities.*" Ms. Kearney stated that the word severe was used as an adjective to describe the program, not as an adjective to describe the formal identification. She continued that it was unfortunate and misleading, but this was not a class pursuant to Regulation 298, clause 31(a) even though it was a class of eight students to one teacher.

She said that when the Special Education Plan was being revised, she asked the Ministry of Education if the Board could organize the learning disability classes on a mixed exceptionality basis, with a ratio of sixteen to one, and the answer was affirmative.

In January 2001, the Halton DSB received a response from the Ministry of Education to the Special Education Plan that had been submitted. The letter requested that the two changes to programming appear to be amendments to the plan, and they need to be discussed with the Special Education Advisory Committee and then passed by the School Board. Ms. Kearney agreed that there was a change from an eight to one ratio for a sixteen to one ratio. It was also noted that the Satellite Program had changed to a two-year only program.

This Satellite Program today focuses on grade nine and grade ten students with learning disabilities, who are able to achieve at an applied or academic level, because the nature of the program focuses on post-secondary, college, and university programs. This program has a ratio of sixteen to one. She said the Board never did operate classes for severe learning disabilities pursuant to Regulation 298, clause 31(a), and that the Board only considered these classes to be 'small' classes.

Mr. Keel referred Ms. Kearney to the ISA funding formula and its impact on class organization. Ms. Kearney stated, "*that in order to have a small class of eight,*

we would be modifying the curriculum beyond 51%” (Transcript, Vol. 2, p. 344, lines 24,25; p. 345, lines 1-2) *“At the secondary level then, we would not be granting credits.”*

Ms. Kearney explained that the student would be placed in the Satellite Program by an IPRC with parental permission.

Ms. Kearney explained that there were presently only seven students in the Satellite Program at the Secondary School, as she was hesitant to take any more students, given that the hearing was going to take place. She also stated, that following the major reporting period of the first semester, principals could talk with parents of students in grade nine, who are struggling, for possible consideration of a placement in the Satellite Program. These students would need to be learning disabled, and would need to be able to achieve at an applied or academic level.

Mr. Keel asked Ms. Kearney about continuing the current Satellite Program beyond grade 10. Ms. Kearney indicated that the Board does not have the teacher expertise, nor do they have the revenue [to do this]. She added that the focus of the program was on only grades nine and ten because of the breadth, depth, and options available at the senior division.

In her testimony, Ms. Kearney pointed out that within the total of sixteen secondary schools operated by the Halton DSB there are only four schools that offer a wide range of extraordinary programs, which include the Satellite Program, and a number of unique technology courses. These would not be available to the student in the home school, whereas they are available at the Secondary School.

During cross-examination, the appellant attempted to seek clarification of the organization of special education classes in the Halton DSB. Ms. Kearny stated that the Halton DSB has not organized any class pursuant to Regulation 298, clause 31(a). She continued that the Board had had smaller classes, but changed the model to Regulation 298, clause 31(g) classes for students with mixed exceptionalities, so that the Board would be able to put sixteen pupils in the class. (Transcript, Vol. 2, p. 368, lines 12-17).

The appellant stated that Mr. Gooch, a previous witness, indicated that the funding formula was not related to placement of exceptional students. Ms. Kearney responded that *“Mr. Gooch’s testimony was confusing.”* She said that there *is* a correlation between ISA, curriculum and placement.

The appellant continued attempting to seek clarification, as to whether the Halton DSB ever operated classes pursuant to clause 31(a) of Regulation 298, and Ms. Kearney indicated that the Halton DSB did not operate such classes. The appellant referred Ms. Kearney to the September Report for 2000, submitted to the Ministry of Education. The appellant read from directions given to school

boards regarding reporting procedures for documenting students who are 'fully self-contained'. She read: "*Report students with special needs who are enrolled and attending a self-contained special education class for the entire school day and where the pupil-teacher ratio conforms with Regulation 298.*" (Transcript, Vol. 2, p. 390, lines 8-12) On the September Report for the Secondary School, sixty-two students were reported as fully self-contained. Ms. Kearney indicated that she was not responsible for completing this report, and that she could not comment.

The appellant then asked Ms. Kearney if she thought the student was meeting the student's potential. Ms. Kearney indicated that the student is being successful, but that the student is not meeting the student's potential. Ms. Kearney said she has gathered from the report card comments that the student is not taking responsibility for the student's own learning. The student is not completing assignments. The student is not following through with the processes established, for example the agenda. "*The student is not accessing the equipment that is provided for [the student] at the school to the extent that [the student] could.*"(Transcript, Vol. 2, p. 399, lines 1-10)

- **Ms. Carla Kisko**

Ms. Kisko is Superintendent of Business Services with the Halton DSB. Ms. Kisko replied to a series of questions posed by Mr. Keel about the overall budgeting within a school board, and the effects of funding pressures on the Board.

No cross-examination was conducted.

- **Ms. Jane Heinzl**

Ms. Jane Heinzl is a psychologist with the Halton District School Board and supervisor of special services in the area. Ms. Heinzl provided both parties with a document from the web site of the Ontario Psychological Association, that indicated that revised scoring instructions and norms for the reading comprehension subtest of the Wechsler Individual Achievement Tests (WIAT) are completed, and will be made public. Ms. Heinzl noted that this subtest was the one where there was a dramatic change from the student's previous assessment. She continued that she was not sure how this would impact the student's scores, but when the new information is published, the student could be retested using the revised norms to determine the student's level of achievement.

Ms. Heinzl reviewed the student's previous test results, and stated that it appears that the student has a reading disability that makes it difficult for the student to decode, but the student has a strong average ability in terms of reading comprehension. Written language was an area of major difficulty, as the student was well below average in the ability to write sentences and spell. Oral expression was an excellent strength. The student was able to communicate

ideas and knowledge at a level comparable to the top 5th percentile, but it must be oral as opposed to written. Listening comprehension was a good solid average. Mathematical reasoning was within the average range, but computation was very low. The student would need to use a calculator for support in this area. Ms. Heinzl stated, that based on her professional experience, she would place the student in the moderate range of a disability.

Mr. Keel asked Ms. Heinzl about the student's lack of completion of assignments and homework. He wondered if *"we are dealing with somebody who you believe can't, instead of won't."* (Transcript, Vol. 2, p. 426, lines 14-22) She indicated that *"students with learning disabilities need support to feel it's safe and to take academic risks."* She continued *"that it's very difficult for a student with learning disabilities to accept the help, to seek the help, and to want to practice alternate strategies if they don't, in fact, or, can't yet accept the fact that they do have this disability."* (Transcript, Vol. 2, p. 427 lines 13-17)

In response to cross-examination, Ms Heinzl stated that to the best of her judgment, the student has a good solid average ability. From a psychological services' file at the Board, Ms. Heinzl reported that the student scored at the 9th percentile on reading a list of words and reading comprehension was at the 58th percentile.

- **Ms. Lillian Hall**

Ms. Hall is co-coordinator of special education for the Halton DSB. Ms. Hall stated that a student with a learning disability, who has the ability to achieve credits, characterizes a student who would make a good candidate for the Satellite Class. She indicated that some students, who are diagnosed autistic, would also be able to participate, and be successful in that satellite class. She continued, that when she taught in this class there have been students who are autistic, or students with physical disabilities or gifted.

Mr. Keel asked Ms. Hall about her understanding of ISA, level 2 and level 3, and how it might impact the issue of programming. She replied that to qualify for ISA funding, programming must have been modified above 50%. She continued that a student with such a significant level of modification would likely not be achieving credits.

Under cross-examination, Ms. Nichols questioned Ms. Hall concerning the IEP and standards for completing IEP's. Ms. Hall agreed that not all need statements identified during the IPRC of 2001 were included in the student's new IEP of Nov. 20, 2001.

Mr. Keel re-examined Ms. Hall concerning the IEP. Ms. Hall concluded that the Satellite Program accommodates students, so that each student can still

achieve the expectation of the grade appropriate curriculum, and therefore achieve credits.

- **Ms. S**

Ms. S is a special education teacher at an elementary school. She had been the student's teacher from grade five to grade eight.

The issue of motivation was recalled, and it was noted that it had become an increasing area of concern at grade seven. The distinction between "couldn't" and "wouldn't" was addressed with respect to the student's willingness to take part in assignments and activities. Ms. S had used techniques, such as a peer tutor when the student did not want to use the educational assistant. She stated that the student had been in a cluster class for grade five and six, and in a similar class for grade seven and eight. The student went out of those classes for subjects, such as physical education and art.

Cross-examination by the appellant dealt with the extensive degree of communication she has had with the staff, and the various strategies that had been used to assist the student with reading.

The appellant pointed out that the application for the ISA claim had asked about one-to-one assistance, and Ms. S replied that one to one support was provided while she was instructing the student, but not all the time, and not consistently.

In response to re-examination by Mr. Keel, Ms. S indicated that the Satellite Program makes significant accommodations. She said that they accommodate the students by providing them with access to technology, access to scribes, readers, and different types of ways to allow them to access information.

- **Mr. F**

Mr. F is principal of an elementary school where the student attended for grades five to eight. Initial questioning of Mr. F by Mr. Keel, focused on the transition from elementary to secondary school. He noted that the secondary schools hold orientation evenings, and arrange visits for parents, teachers and students to meet. Staff of the elementary school met with secondary school staff to share general information, and teaching strategies that have worked well with particular students.

The appellant questioned Mr. F about the student's reading level. Mr. F indicated that the student was reading at a grade five level, and according to the provincial definition, the student's current achievement in reading was a level two, which indicates that the student's independent reading is below the provincial standard.

- **Ms. Deb Wood**

Ms. Wood is a special education coordinator with the Halton DSB. Ms. Wood indicated that she had specialist qualifications in both Reading and in Special Education.

Ms. Wood described an information brochure (Exhibit 21) that is developed for elementary schools to use to share with parents to help them understand the Satellite Program. Ms. Wood said that this information was shared with parents of grade eight students, at the orientation night on March 27, 2001, when the parents were told that the class size was up to sixteen.

Mr. Keel asked Ms. Woods if she had heard the comments during the hearing about the student being in grade nine but having a grade five reading level? She said that she had, and that she could see why that might be confusing. The content and the skills of the Satellite Program for the student is at a grade nine level. Some of the materials that the students would use would be at a variety of reading levels, but the students would be measured at a grade nine level.

The appellant asked Ms. Wood about other reasons why the Board changed the class size from eight to one, to sixteen to one. Ms. Wood stated that the principal, Ms. G., wanted the parents to understand, that providing students with an opportunity to work in larger groups was important for extending skills. The appellant then read from Transcript from the Preliminary Hearing [page 30, line 17] where Mr. Keel stated, *“the only reason for the change was not a pedagogical reason on the part of the Board, or any kind of decision on the part of the Board that it could cut back. It was because of the Ministry funding model.”* (Transcript, Vol. 2, p. 500, lines 2-6)

Mr. Keel did not re-examine the witness.

The Tribunal asked Ms. Wood about the availability of support to students once they leave the Satellite Program and continue into grades eleven and twelve. Ms. Wood indicated that the Board has special education teachers, and resource rooms that the students are able to access. The students may also take a Learning Strategies course (GLE).

- **Mr. H**

Mr. H is Head of Special Education at the Secondary School. He began his testimony by reviewing the method by which exceptional pupils are placed in the Satellite Program at the Secondary School. He noted that it is a selection process that does not take place at the school level. In addition, the method used to establish and review the IEP with parents at the beginning of the school year was discussed. Mr. H stated that the Special Education Resource Teacher (SERT) and teachers work together and review the previous grade eight IEP. Revisions are made and a copy is sent home to the parents for reaction. This final copy of the IEP is then forwarded to the teachers. He stated that a secondary school IEP would not contain statements indicating a need for increased reading levels, increased reading fluency, or to expand decoding skills.

These needs would not relate to a specific curriculum guideline, and therefore would not be included in a secondary school IEP.

A discussion of the use of the laptop computer purchased through an ISA-1 grant followed. Mr. H indicated that the laptop is portable and can be used in a number of places. The scanner and the printer are located in a room that is used both as a classroom and as a resource support room. He indicated that the student can access the room on the student's own, or the student can have an Education Assistant or a teacher come with the student. Mr. H continued that the student's teachers report that the student is achieving three out of four credits and is "*off to a good start*". The Visual Arts teacher, Ms. I. reported that there is optimism that the student would also be successful in earning this credit as well. There appeared to be positive signs of improvement recently as indicated by comments from the student's teachers.

In his testimony, Mr. H outlined the different approaches that are available to the student when designing the program to meet the student's needs. He explained that the student could select a Learning Strategies course (GLE) to support three other courses, and use it as a means to support the workload of the other three courses in the timetable. He added, that a strategy that fewer students appear to select, is to take one less course in a semester, and to seek assistance during a timetabled resource period (non-credit). Another strategy that is part of the overall program calls for a student to rejoin a class in the second semester to complete only those expectations of a course not completed during the first semester.

Mr. H stated that the student needs to be more willing to consistently accept the accommodations, and the student has to get homework done more efficiently. He felt that there was improvement on the first point as the student recently asked one of the Educational Assistants if she could scribe for a technology test.

In cross-examination, the appellant addressed the issue of the development of the IEP, and the extent of the detail included. She inquired as to whether or not the IEP would identify specific supports such as the use of the calculator for Mathematics. Mr. H indicated that it could be part of the IEP.

Mr. H pointed out that secondary schools do not provide a specific course in remedial reading. It would be very difficult to achieve course credits, and to work in a remedial reading program at the same time, as it would be hard to keep up with the pace and demands of attaining credits. The appellant expressed her concern that the student may graduate and be functionally illiterate.

During re-examination questions from Mr. Keel, Mr. H responded that he felt that *“[the student’s] reading level is probably higher than is suggested by some of the experts here.”* (Transcript, Vol. 2, p. 534, lines 20-22)

- **Ms. G**

Ms. G is principal of the Secondary School. Ms. G described the school as a diverse secondary school providing programming through a wide variety of options. In addition to receiving students from within the school’s boundaries, the Secondary School also receives students from the entire Oakville area for specialty programs including the Satellite Program.

Ms. G told the Tribunal that it was the goal of the Satellite Program, to enable the grade nine and ten students to achieve a large portion of the compulsory courses for their diploma. The Tribunal was told that typically, prior to the placement in grade nine, the timetable for the first semester was developed in consultation with the special education staff from the elementary school, and with those parties and administration that are most closely connected to the Satellite Program. It was explained by the Principal that the Department Head, Mr. H,

had the major responsibility for the development of the timetable for each student and for making any of the revisions that may be incorporated into the IEP.

She explained how the Satellite Program is introduced to parents at information sessions held at the school in May. She discussed the enrollment in the classroom and the need to have students in the class receive the same curriculum as students in the regular classrooms. She said the class had a sixteen to one student-teacher ratio, and that such a number was consistent with the Board's plan. She continued that there were pedagogical reasons, as well as financial for having classes that were not too small.

She reviewed how the IEP is developed through a consultative model involving the teachers and the Department Head in this case, Mr. H. The process, she added, included the previous elementary special education teacher, Ms. S. It was noted that each exceptional pupil who goes to this school has his/her IEP developed from September to November while information is being gathered.

Currently, the student is registered in a total of eight courses for the year, four per semester. Ms. G stated that at the present time, the student is earning three credits and the student may also earn the fourth credit. She said that she would encourage the student to remain in a full program.

Mr. Keel asked Ms. G to review the proposed timetable that the appellant had provided. (Exhibit U-7). She indicated that the main difference was that the appellant' timetable included three credits, whereas the school's timetable included four. She explained that to have a program of remediation it would be necessary to reduce the course load, and have one period time-tabled as a resource period which would be non-credit.

Replying to a question concerning the nature of the students in the class, Ms. G stated that all the students are learning disabled, with individual strengths and needs.

Mr. Keel had Ms. G look at the assessment report suggestions and recommendations completed by Dr. Barker and Dr. Smith. (Exhibit C-24) Ms. G indicated that most of these suggestions are already being addressed in the school. She was open to discussing the provision of some remediation in mathematics, but indicated that she was not aware of the specific remedial reading program suggested.

Ms. G explained the difficulties in providing remediation to students when the Ministry expectations state that a credit can be awarded only for completing activities that are included in a curriculum guideline. In addition, all students in the program must earn credits that are compulsory, making it even more difficult to offer a program of remediation.

In explaining the program options for the senior division, she indicated that at the end of grade ten, the students are offered an extensive menu of courses. Each student, from outside the designated area of the school, has the option of returning to his or her own school or continuing at the Secondary School to access the broad array of options available in the senior division.

During cross-examination from Eva Nichols, Ms. G explained that she could not guarantee that a student needing specific help in Mathematics would be taught during a resource period by a person qualified as a mathematics teacher. She said that the teachers working with the students enrolled in the Satellite Program are all qualified special education teachers. Ms. G stated that class size on its own does not determine whether a person can earn a credit; it is the degree of modification that a principal must consider in awarding a credit. In answer to another question from Ms Nichols, on class size, the principal stated there might be times when the size of the class is too small, and the ability of the student to

participate in various activities is better in larger groupings. She continued that the ability for group interaction is enhanced in relatively larger groupings. Group work she maintained was 'richer' with more peers, and more difficult to accomplish with a small group such as four.

Further questioning by Ms. Nichols regarding the number of students in the Satellite Program revealed that there are currently seven students in the grade nine grouping, and four more in the grade ten class, for a total of eleven. There are an additional nine students in the program in grades eleven and twelve. These students have been grand fathered, as they had entered the Satellite Program before it became a two-year program.

Ms. G indicated that the IEP would be revised for the second semester and would allow for the student to use a calculator in mathematics class. She also indicated that the student would have all the support and accommodations permitted for the provincial literacy test. Ms. G indicated that it is her belief that the school personnel are addressing the student's strengths and needs at the present time. Ms. Nichols asked Ms. G about the location of the computer and scanner. Ms. G indicated that it would not be wise to be moving this equipment from room to room, so instead they place it in one room for the student to access. This also helps to make it more likely that the equipment will be in working order all the time. Ms. G stated that the scanner is available to the student in English class but the student does not use it due to feelings of discomfort about doing so in the presence of other students. Ms. G indicated that the special education department would do whatever they could to make this technology available.

Ms. G stated that the student's Report Card provides evidence that the Satellite Program is meeting the student's needs, as the student is currently earning three of the four credits, and we have reason to believe that the student will be successful in earning the fourth credit by the end of the semester.

When questioned by members of the Tribunal concerning the possible involvement of staff from the nearby Trillium School at Milton, Ms. G replied that at this point in time, a request for such assistance has not been raised by the parent, or by staff. It was explained by Ms. G that it might be too early to request such assistance from staff after a relatively brief period of only three months. Ms. G indicated that there is a dialogue already established between the Secondary School and Trillium.

The appellant' Summary Statement

The appellant closed by describing her child, the student, as learning disabled with a significant disability in reading and writing and a spelling deficit. The appellant presented an overview of her case highlighting the need for the student to be in a secure, safe environment where the student will take risks. She summarized her requests to the Tribunal to include:

- a. placement in a class guaranteed to be capped at a maximum of eight students with like peers
- b. allow for at least 75% of the student's day to be spent in a self-contained setting
- c. individual assistance with support by qualified staff
- d. appropriate, direct, explicit systematic multi-sensory instruction to provide remediation in reading by a qualified reading teacher.
- e. an IEP which complies with the standards and a transition plan that is in compliance with the Regulations.
- f. appropriate accommodations in all settings
- g. consideration of the costs as per Exhibit 10, Tab X.

Mr. Keel's Summary Statement

Mr. Keel referred the Tribunal to the *Education Act*, section 257 (30) Division D that does not permit a board to run with a deficit. Presently the special education

area which provides the programming and services at Halton DSB, is running a deficit.

He referred to Regulation 298, clause 31 (a), and noted that it is not a requirement that the Board provides classes under clause 31 (a), and that clause 31(a) does not deal with the issue of credits or program. He stated that the evidence of the Board is that it did not and does not provide a clause 31(a) class. The small class (cluster class) was changed to a self-contained class, and more recently to a sixteen to one, pursuant to Regulation 298, clause 31(g) for the following reasons: funding, pedagogy, and the new secondary school reform.

Mr. Keel stated that the present class of mixed exceptionalities is part of the Special Education Plan. If a clause 31(a) class were ordered by the Tribunal, it would not be a credit granting class. He also indicated that there are no standards for the determination of severe learning disability.

He went on to state that Trillium is a residential school for serving students with severe learning disabilities. The appellant has indicated she does not want that for her child.

Issues

Issue #1 - Did the Halton District School Board have classes organized pursuant to Regulation 298, clause 31(a)?

Mr. Keel, on behalf of the Board, said that there never have been such classes in this School Board, and stated that there presently are not such classes. Ms. Kearney's testimony supported this view.

The appellant claimed that classes for learning disabled students were self-contained classes and operating in the Halton District School Board.

Documentation from the IPRC for the 1999-2000 school year indicated that the student's placement was self-contained. The appellant stated that the IPRC decision of February 22, 2001 was not consistent with the Special Education Plan, in that it indicated a change of placement from a self-contained class to a mixed exceptionality class. Several witnesses presented evidence to support the appellant's opinion that mixed exceptionality classes under clause 31(g) of Regulation 298, did not appear in the School Board Plan until May 2001.

The testimony also showed that the Ministry of Education noted a change in the program offerings by the Board, and requested an explanation as to what was now being delivered for the school year 2001-2002. The Ministry of Education September Reports, introduced by the appellant, indicated that the Halton DSB had reported students present in self-contained classes for learning disabled students, and Special Education Plans for the years prior to May 2001 also confirmed this.

The Tribunal agrees with the parent, that there was a placement change from a self-contained learning disability class of eight to one, to a mixed exceptionality class of sixteen to one.

It is the view of the Tribunal, that the student's placement in a mixed exceptionalities class with a ratio of sixteen to one, after having been in a self-contained learning disabilities class with a ratio of eight to one, constitutes a change of placement.

The Tribunal believes that whether the classes were known as clause 31(a) classes or clause 31(g) classes, is no longer relevant. No parent would have the same knowledge of the Regulations that school board personnel would have, and therefore parents would not be expected to distinguish between the classes under Regulation 298. Having heard the Board's evidence concerning the practice of admitting primarily students with a learning disability to the self-

contained secondary school class, it follows that it is reasonable for a parent to believe that the class would be eight to one for learning disabled, as it had always had that ratio in the past, and that it was indeed a specific learning disability class.

When the IPRC recommendation was to place the student in the Satellite Program for mixed exceptionalities, it seems perfectly reasonable for a parent to believe there was a placement change.

However, the Board's decision not to designate specific classes for learning disabled students, now seems to have been addressed in the Special Education Plan, May 2001, as submitted to the Ministry of Education for review, and it is also addressed in the actual implementation of their plan. In addition, the Board's present practice of placing only students who have been identified primarily with a learning disability in the Satellite Program appears to be well designed, with the potential to meet the student's needs.

The Tribunal feels that the Board must communicate the types of classes and programs they are offering in a clearer more concise manner, so that parents have a clearer understanding of what is being provided by the Board. The Board must also ensure that decisions made by an IPRC are made within the requirements that Regulation 181 has established. It is always important to take the time to ensure that parents have a full understanding of the decision.

Issue #2 – Does the funding model impact the Board's ability to offer credits in a class pursuant to Regulation 298, clause 31(a)?

There was evidence throughout the hearing, that indicated considerable confusion concerning the Special Education Funding Model, and in particular the Intensive Support Amount (ISA) funding. The Tribunal therefore felt obligated to respond to the issue.

Mr. Keel stated it was his understanding that a class pursuant to Regulation 298, clause 31(a), does not afford students in the class, an opportunity to gain credits. Mr. Gooch was a credible witness from the Ministry of Education, and the Tribunal accepted his evidence that the Ministry does not expect school boards to make decisions about programs on the basis of the funding formula. Mr. Gooch added that the ISA Profiles do not replace the definitions of exceptionalities, nor do they eliminate exceptionality specific programs.

Mr. Drewett, from the Ministry of Education stated that there is no intent by the Ministry of Education to have self-contained classes pursuant to clause 31(a) of Regulation 298, only for ISA eligible students. In addition, Mr. Drewett clearly stated that the principal of the secondary school makes the determination (to grant a credit or not) on an individual basis.

The Tribunal accepted the testimony of the two Ministry of Education officials. It was clear to the Tribunal from the evidence that they presented, that the ISA funding does not dictate whether or not credits can be offered in a small self-contained class of eight to one. The Board therefore has the autonomy to operate smaller classes that would lead to credits, if they wish to do so.

Mr. Keel, in his opening statement, stated that the Board could not operate a class pursuant to Regulation 298 clause 31(a), as it would place the Board in a more significant deficit than it is already in, in the special education area. The Tribunal felt that this more clearly represented the Board's position as to why they would not operate such a learning disability self-contained class pursuant to Regulation 298, clause 31(a). The designation of 'mixed exceptionalities' for the self-contained class was clearly an attempt by the Board to increase maximum class size to sixteen to one as compared to eight to one with the learning disability designation, for financial reasons.

Issue #3 – Does the size of the class impact on the ability of the student to receive appropriate programming?

Having heard the evidence concerning the practice of admitting primarily students with a learning disability to the class, the Tribunal believes the issue is reduced to the number of students assigned to the class. The Tribunal heard evidence that sixteen to one would not become the number used to fill the class to maximum. Presently, in the Secondary School Program operating at the Secondary School, there seemed to be a predisposition to maintain the class size at about twelve students at any given time during the day. This class size was not viewed as large by the school staff, and had the benefit of assistants working under the supervision of a qualified teacher.

The Tribunal feels that the size of the class is one variable which seems to be well addressed by the Secondary School staff, and is not the sole determining variable for the student's success in secondary school.

Reasons:

This led the Tribunal members to weigh the evidence concerning the present placement of the student, and to determine whether or not it is meeting the student's needs, and whether it is in the student's best interests.

Mr. Keel in his opening statement stated that the Tribunal cannot focus on the best interests of the student, as in doing so the Tribunal would prejudice the other students. He continued that it would impact on a number of other students in a number of different areas of the Board. Mr. Keel also stated that the placement issue is an issue with respect to the Special Education Plan, and that is agreed to between the Board and the Ministry of Education.

The appellant pointed out that the Supreme Court Ruling of the Eaton decision, *Eaton v. Brant County Board of Education* (1996), 142 D.L.R. (4th) 385 (SCC), stated that decisions must be guided by the best interests of the child. (Exhibit 5)

The Tribunal agrees with the appellant. It is accepted law that the Tribunal is to make its decisions based upon the best interests of the child.

There was agreement from both parties that the student did have a learning disability and that accommodations were necessary for the student to have success in school. The Tribunal heard testimony concerning the student's ability to deal with the demands of a secondary school curriculum, and at the same time, select programs that provide the student with as many post-secondary education and career opportunities as possible.

The testimony from the student's teachers indicated that they are offering considerable opportunities to the student to support the student's learning needs. Dr. Smith and Dr. Barker reinforced the appellant's contention that the student has a significant learning disability, and that the student will require as much extra help as the student can get. The evidence presented in the teachers' reports and the assessment reports, underlined the need for support and assistance on a regular consistent basis as critical to the student's success.

The Tribunal heard that the student needs to be helped to advocate, and to use the assistive technological devices in an effective efficient manner. The evidence showed that teachers are willing and able to continue putting a number of strategies in place to accommodate the student's needs.

The Tribunal heard evidence from the Board's witnesses that the placement in the Satellite Program at the Secondary School appeared to be meeting the student's needs.

We believe that there are very compelling reasons to support the Secondary School:

- First, it is a facility that can provide the types of technology course options that the student currently wishes to consider as career pathways to college or the world of work. The student's interests and abilities call for a more technical based education. The options needed for the student to achieve that type of programming exist at the student's current secondary school placement.
- Secondly, the Satellite Program, with a relatively small class enrollment, focuses on exceptional pupils who are identified as learning disabled. This program appears to be able to adapt to the student's needs through grades nine and ten.
- Thirdly, giving the student the option of remaining at the Secondary School for grades eleven and twelve, appears worthy of future consideration for the continuation of special education programming through the resource services at the school, and for selection of appropriate technology courses from the wide array of courses available.
- Lastly, the principal, Ms. G described the breadth of options available at the Secondary School. The Tribunal feels these options provide opportunities to have additional accommodations to the student's program, making it possible through the GLE credit courses, to support the student's learning needs. Incorporating GLE credit courses into the student's timetable has the potential to provide a good match with the appellant's suggested timetable. Staff also testified to their willingness to pursue any resources available from the Trillium Provincial School that could assist with staff training and equipment utilization.

We would encourage the appellant, the student, and school personnel, to begin discussions that will support the ongoing design of a program plan that is going to meet the student's needs. The student needs to be included in these discussions, to ensure that the student is taking ownership for the decisions made.

The Tribunal was encouraged by the wide range of supports and services that were available at the Secondary School, and the commitment we heard from the teachers and the principal to meeting the student's needs.

Recommendations:

1. The Tribunal supports the Board's practice of placing only students with a primary identification of a learning disability in the self-contained class and recommends that this continue for the Satellite Program. This class should be restricted to students who have been identified through the IPRC pursuant to Regulation 181/98.
2. A Transition Plan for the student should be developed collaboratively with the student, the student's parent, and appropriate educational staff. This plan should be modified, as required, to meet the student's needs in the secondary school setting, and to prepare for post-secondary opportunities.
3. The Tribunal heard that presently there is a plan in place for the student to attain the necessary credits for graduation at the Secondary School, and a great deal of the student's success will depend on the student's willingness to participate in the program. Any support, encouragement, and counseling that could be offered to assist the student in understanding the student's learning disability would be important to implement

4. The Individual Education Plan should reflect all the accommodations necessary for the student's success, and should be readily available for all school situations. The development of the IEP should include the parent and the student along with staff from the secondary school. The timetable, and considerations shared by the appellant at the hearing are worthy of consideration for incorporating into the student's timetable. Emphasis should be placed on the use of the available technology to assist the student in learning.

5. The Tribunal recommends that the Halton District School Board utilize the resources of the Trillium School to provide intensive training for staff and the student in the use of the technology, which has been purchased specifically for the student. Ongoing efforts need to continue to ensure that the student not only learn how to effectively use this technology, but also that the student has ample opportunities to readily use it within the school day, and to be able to use it with ease in a timely manner.

The appropriate staff at Trillium School should also be accessed to provide in-service for the teaching staff at the Halton District School Board to learn teaching approaches and techniques appropriate for learning disabled students. It is necessary to have a clear understanding of the characteristics of learning disabled students in order to properly accommodate their needs.

Decision:

The Tribunal orders that the appeal be dismissed and that the decision of the Identification Placement Review Committee on February 22, 2001 be upheld.

In light of the Special Education Tribunal's decision, the issue of a 'stay' would appear to be moot.

Costs cannot be awarded as the Tribunal does not have the authority to award costs. (Statutory Powers and Procedure Act, Section 17.1)

The Special Education (English) Tribunal

Marilyn Thain, Chair _____

Sharon Carson, Member _____

Peter Cassel, Member _____

March 28, 2002