



ONTARIO SPECIAL EDUCATION (ENGLISH) TRIBUNAL File#27 (b)

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In the Matter of the Education Act R.S.O. 1990, C.E.- 2, Section 57

and

in the Matter of the Ontario Special Education (English) Tribunal

at a preliminary hearing into the matter of

the placement of S. A.

BETWEEN

Mrs. S. L. A., Appellant

And

Halton District School Board (HDSB), Respondent

Tribunal Members:

Wayne Tompkins (Chairman)  
Judith Ross Hendin (Member)  
Marilyn Thain (Member)

Appearances:

Mr. Robert G. Keel, Esq.      Counsel for the H.D.S.B.  
Ms. Nadya Tymochenko

Mrs. S. L.A.                      Parent (Applicant)  
S. A.                                Student (Applicant)

Ms. Heather Holden            Executive Director, Learning Disabilities Association of Halton

Mr. Peter Ferren, Esq.        Secretary, Ontario Special Education (English) Tribunal

The hearing was held at the Ramada Inn, 360 Oakville Place Drive, Oakville, Ontario, L6H 6K8 on June 25-27, 2000, commencing at 9:30 a.m.

## **Introduction**

At the opening of the hearing the Chairman stated that this Tribunal would be guided by the Education Act, R.S.O. 1990, C.E.-2, Section 57, the Regulations made thereunder, and the Statutory Powers and Procedures Act noting that Section 57(4) delineates the decisions, which the Special Education Tribunal may make. 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 (of the pupil).

The Chairman also stated: *"In a Tribunal, we attempt to give everyone opportunity to say as much as needs to be said, so that we can arrive at the best possible solution to the problem at hand"* (Transcript — page 4). The Chairman also noted that the participants present were the same members as in the January hearing.

## **Appellant's Position**

The Appellant first presented her position in a letter dated February 25, 2000 (Exhibit 1, Tab. 2). She stated: *"I disagree with the I.P.R. C. placement decision made by the Halton District School Board as this placement will not meet the needs and is not in the student's best interests. The student is entitled to a placement in a self-contained Learning Disability class as this placement is necessary in order to meet needs and is in the student's best interests"*.

The Appellant requested *"that the Tribunal order the Halton District School Board to place the student in a self-contained class for students with learning disabilities as per Regulation 298, Section 31(a), and that the student be provided with appropriate programs and supports to meet [the student's] needs"*. She also requested that the Tribunal order her costs to be paid (Transcript - Vol. 1, page 8, lines 18-24). She indicated in her opening statement that the student is a student with a severe learning disability and as such requires a placement that will meet [the student's] needs.

## **Respondent's Position**

Mr. Keel requested confirmation that the Tribunal would not hear evidence on the issue of identification. He explained that neither the decision of the Tribunal nor the Appellant's submission referred to that issue, and said that although he had sought clarification, he received none. Therefore, he was not prepared to proceed on the matter of identification and explained that he would seek judicial review if that was the Tribunal's intention. He argued that the Tribunal does not have jurisdiction to deal with the issue of severe learning disabilities under Regulation 298, Section 31(1)(a) (Transcript — page 14, lines 10-1 1).

Mr. Keel also said that the impact of Regulation 181, Section 16(4) is that the Tribunal cannot direct the Board to create programs and, in support, he referred to the D. case. He also referred to the presumption of integration in law, and noted the E. case in support. In conclusion, he stated that Halton is one of the few Boards, which has a congregated setting in secondary schools.

The Chairman ruled that we were beginning with a new hearing and that the Tribunal determined that there was jurisdiction to proceed. He explained that the Tribunal is open and flexible and that we do not expect the parent to adhere to the issue of placement, we will hear the *“total issue”*.

### **Witness List**

#### **For the Appellant**

The mother

The student

Clive Hodder

Dr. Richard Steffy

#### **For the Respondent**

Tom Adams

Bill Demopolis

Brenda Kearney

Jackie Stern

John Stieva

Marg Zavitz

### **Summary of Appellant’s Witnesses’ Testimony**

#### **The Appellant**

Mrs. S. L.-A. is the mother of the student; she was representing herself and served as a witness for her case.

The appellant opened by stating that there was a need for the Tribunal to comment on *“the appropriateness of the School Board actions dating from the I.P.R. C in 1999 throughout the Appeal process* (Transcript - page 21, lines 16-20). She felt *“through ignorance or design”* the Board’s *“encroached on our rights to use this process and have abused their positions of power”* (Transcript - Vol. 1, page 21).

In support of this allegation she presented a series of letters that were written beginning June 4, 1999 (Exhibit GI, Tabs. A & B). She felt they (the Board) did not *“fulfill their mandate and make a proper placement decision”*. At the I.P.R.C. of June 22, 1999, the appellant asked what the reasons for placement were and received no response (Transcript - page 24, lines 20-23).

The appellant stated that the Board is creating confusion around the use of the term's "program" and "placement". The Appellant requested an appeal on June 21, 1999 (Exhibit 1, Tab. C) and the Board did not grant this appeal (Exhibit 1, Tab. D) stating that there was no change in identification or placement.

The appellant also noted that during the 98-99 school year the satellite class was called a self-contained placement for students with severe learning disabilities maintaining an 8 to 1 ratio. However, the letter received from Mrs. Kearney, Superintendent, dated September 8, 1999 (Exhibit 1, Tab. V) clearly states the placement is in a class of mixed exceptionalities which the Appellant believes constitutes a change in placement (Transcript — page 27, lines 20-23).

The Appellant presented a letter she received from Mr. Keel, lawyer for the School Board dated April 24, 2000 (Exhibit 1, Tab. E) stating that *"if you are successful and the Tribunal requires the Board to establish a self-contained class of severely learning disabled students with a maximum enrolment of 8, which is affirmed by a judicial review, the Board would be obliged to eliminate the program in its entirety"* (Transcript - page 34, lines 9-16).

The Appellant cited a number of earlier cases that had gone forward to a Tribunal. Each of her examples supported the principle of acting in the best interests of the student. She also cited the D & Muskoka Board of Education. case highlighting the fact that the ruling clearly stated that *"nothing in the reasons (for the decision made) can affect the period after September 1, 1998"*.

The Appellant presented the developmental history of her child indicating that the milestones *"were met pretty much on target with the exception of the child's language development"* (Transcript - page 43).

The Appellant also presented the student's school history beginning in January of 1993 when the student was placed in a self-contained learning disability class. This placement has remained throughout the student's school years.

The Appellant described the testing that had been done over the years, which indicated that the student has language-based learning disabilities or dyslexia (Exhibit 1, Tab. L, Tab. O). She summarizes by saying that *"consistently, testing has shown that the student's difficulties in language are due to a lack of phonemic awareness as well as the speed in which the student processes verbal information"* (Transcript - page 52, lines 7-10).

The Appellant states that she is concerned that the student has not been utilizing a computer in any meaningful way while at high school. In October 1999 (Exhibit 1, Tab. S) an I.S.A. claim was made for the student for appropriate computer equipment. This equipment has not been used to date but plans are in place for this to begin in September 2000. Appropriate training for the staff and for the student is part of the plan.

The Appellant indicates her concern for the student's I.E.P. (Transcript - page 58). She did not sign the I.E.P. and wrote to the school to express her concern about it being placed in the student's O.S.R. She states that many of the statements are based only on negative observable

behaviours. There are no measurable objectives or subjective measurement tools listed and lastly, there is no transition plan to guide us toward the student's goals (Transcript - page 58, lines 13-21).

She states that *"the student really needs a highly differentiated approach to the curriculum as opposed to regular curriculum in a small class"* (Transcript - page 62). The appellant states that the class situation is different than what it had been. Prior to this year, the Satellite Centre had *"five special education teachers' and "most of not all of their time was spent in the centre". Now "regular class teachers teach most of the time in regular school, Then they come into the class to teach to the small class. The ability of the teachers to individualize has been lost"* (Transcript - page 70, lines 17-18). The appellant described the changes made to the brochure outlining the Satellite Centre. These changes indicated a significant change in the direction of the program (Transcript - pages 71-72).

### **Cross-Examination by Mr. Keel**

Mr. Keel began his cross-examination of the Appellant to determine her understanding of Regulation 298, Section 31(a). He pointed out that there was an investigation of the Trillium School as a potential placement for the student. Mrs. Abraham stated that the application had been withdrawn as *"the student did not want to attend and also they were told that the application probably would not be looked at quite seriously, given the fact that the student does not require a residential facility to live in and they felt that the student's reading level was a bit higher than the rest"* (Transcript — page 98, lines 1-6).

Mr. Keel, inquired of the Appellant if *"a class of only students with severe learning disabilities would make it much more difficult for the student to learn?"* (Transcript - page 108, lines 24-25). The Appellant disagreed. The Chairman of the Tribunal inquired if any contacts have been made regarding post-secondary education for the student. The Appellant indicated that she has made contacts and inquiries about potential programs (Transcript - page 109, lines 1-2).

### **The Student**

The student is the child of the Appellant. The student presented [the student's] position by reading a prepared statement. The student described what it was like to have a learning disability and indicated that [the student] did have goals.

### **Cross-Examination by Mr. Keel**

In cross-examination by Mr. Keel, the student described the F.M. system, which was purchased for [the student's] use. The student also described how [the student] stopped using it because it *"kind of got in the way a lot"* and therefore the student *"started forgetting to get it"* and now the student does not use it at all (Transcript - page 81, lines 12-19).

## **Dr. Richard Steffy**

Dr. Steffy is a professor at the University of Waterloo, Psychology Department and Division of a Clinic known as the Waterloo Child Assessment Project. He is presented as an expert witness in the field of education for the learning disabled.

Dr. Steffy reported that he had completed assessments on the student (Transcript — page 112, lines 24-25). The first was in 1995, the second in 1998 and a “*small top up*” in May 2000 (Exhibit 1, Tab. M) (Transcript 113, lines 4-2 1). He stated that the student had a “*severe disorder or learning disability*” (Transcript — page 114, line 1), and that the student had a communication difficulty both in the receptive and expressive areas (Exhibit 1, Tab. M).

He described a significant discrepancy in the test results — “*performance on some tests are in the 90th percentile and in others within the 1st percentile*” (Transcript - page 11, lines 10-16). “*The student is showing a lot of ability*”. “*The student’s needs could be served if the student’s education focussed on further remediation of the basics*” (Transcript - page 116, lines 5-7). In response to the question of “*whether special education services are appropriate to bringing up those skills*”, Dr. Steffy’s response was “*yes*” (Transcript - page 118, lines 4-5).

He was asked if he saw the student as a student capable of going on to post-secondary education and he again said “*yes - there’s a level of brightness there*” (Transcript — page 118, lines 14-16). He acknowledges that there are services available now in Universities and Colleges across Ontario for students like the student. He also stated “*the rate at which the student goes through would have to be tempered*” (Transcript - page 188, lines 22-23).

## **Cross-Examination by Mr. Keel**

Mr. Keel cross-examined Dr. Steffy to determine the degree of disability and he sought clarification of the language used to describe the disability. In Dr. Steffy’s final response, he stated “*it’s certainly completely severe in terms of those 1 percentile scores ... the student’s really capable of a lot of good functioning, so that I felt pulled along. But in those domains it is severe*”. “*You don’t get from 1 percentile score without that being thoughts of as severe*” (Transcript - page 123, lines 18-24). In response to Mr. Keel’s query “*... that it would not be in the student’s best interests to be in a class with other students who had more severe learning disabilities*” (Transcript - page 125, lines 14-18). Dr. Steffy stated “*no*” and indicated that “*heroic things have occurred when there is quite a mix of severity levels*” (Transcript — page 125, lines 19-24).

Further cross-examination resulted in Dr. Steffy describing the student’s I.Q. as at the “*bottom edge of the average range*” with the “*average range being 90-100*” (Transcript - page 129, lines 17- 25). Dr. Steffy further clarified the measuring of a learning disability stating “*that’s why I made some emphasis about the scores that were so low and so high, and in saying those were valuable things, not the I.Q. score*” (Transcript - page 135, lines 18-20).

During Mr. Keel's cross-examination, a number of questions were posed to determine the language used to describe the student's learning disability ranging from severe to moderately severe.

Dr. Steffy concluded that *"it's severe. You don't get from 1 percentile score without that being thought of as severe"* (Transcript page 123). Dr. Steffy then questioned about the Trillium program being the best program available stated *"that experiences that we have had with individuals have been very rewarding"* (Transcript — page 127).

### **Mr. Clive Hodder**

Mr. Clive Hodder is Superintendent of Blind, Deaf-Blind and Learning Disability Programs for the Provincial Schools Branch. He is presented as an expert witness on the Provincial Programs offered for the severely learning disabled in Ontario.

Mr. Hodder began by describing the process used for admissions to the Provincial Demonstration Schools. He described Demonstration Schools as residential schools with the exception of the link program at Trillium. The Link Program is a one-year day program (Transcript — page 142, lines 20-24). Highly specialized instruction and small classes of up to 8:1 are provided.

In describing the *"typical student"* in the Provincial School he stated that *"students who come into our programs do have good intelligence, although their intelligence scores are significantly depressed by their disabilities, there is no question about that"* (Transcript - page 146, lines 8-11). Mr. Hodder notes that in the provision of Regulation 298 for *"having 16 students in the mixed exceptionality class, the framers of that particular regulation were not looking at 16 severely disabled students"* (Transcript — page 150, lines 14-20).

In response to the question of whether Regulation 298 is still in effect, Mr. Hodder answers *"it's still in effect"* (Transcript—page 151, lines 9-12). Mr. Hodder states *"as the student grows older and moves in the secondary, then you put more of an emphasis on the learning strategies approach because they do need that in order to be able to get the credits and to access the curriculum"* (Transcript — page 153, lines 1-3 — page 154, lines 23-25).

### **Cross-Examination by Mr. Keel**

Mr. Keel began by seeking general information about Provincial Schools. He questioned Mr. Hodder as to the types of classes he is aware of that are self-contained for *"severely learning disabled students"*. Mr. Hodder stated that some do remain for elementary students and he also stated that the Halton Board offered the Satellite Program which was actually an exemplary program *"I understand that program is reduced, like many programs across the Province"* (Transcript — page 165, lines 8-9). Mr. Keel questioned Mr. Hodder about the profiles gathered for entrance into the Trillium School. Mr. Hodder responded that *"when I look at the student's educational assessment information, a lot of it looks similar to the kind of student that we would admit to the Trillium School or to another Demonstration School"* (Transcript — page 168, lines 9-12).

## Summary of Respondent Witnesses' Testimony

### Ms. Brenda Kearney

Ms. Kearney is the Superintendent of Education for the Halton District School Board. She explained that since 1998, the funding formula in the Province of Ontario has been determined by a baseline of service across the Province, which caused a major reduction in special education services in Halton (Transcript — page 174, lines 1-3). She explained that three things come to mind when you refer to the current model for special education at the secondary level. They are the funding formula, the new secondary school reform document, and the lack of special education teachers. She said that the Ministry proclaimed that integration should be the first consideration for all pupils when looking at placement, and that very *few* Boards at the secondary level offer congregated programs for learning disabled students. She said that Halton does offer the self-contained program at three locations (Satellite Program) and that children are integrated as appropriate, based on their educational needs.

Ms. Kearney also explained that in the Special Education Plan guidelines, there are no requirements for self-contained special education classes. In fact, Boards are only *encouraged* to provide special education services for children. She said that the gradation of exceptionality no longer exists (Transcript — page 193, line 1).

The ratio in the satellite class is 16 to 1, along with instructional assistants' 1.5 to 2.3, and other support. She also explained that there have never been classes of 8 to 1 for learning disabled children in Halton, they were always classes for mixed exceptionalities, although the common issue was learning disabilities. She explained that their different exceptionalities add strength to the dialogue, discussion, sharing and pairing (Transcript — page 187, line 19 — page 188).

Ms. Kearney spoke about the existing situation in which funding doesn't match policy and program. If a program is modified more than 50-80% (level 2), they cannot grant a credit for the course. So there are no gradations for learning disabilities. But, for funding, there are gradations. For the student, there was a level 1 equipment grant, which included f. m. /laptop/scanner/software. Ms. Kearney also explained that when the writing team had conference calls with John Fateau, the Educational Officer of the Ministry, and asked him how many Boards were looking at self-contained congregated programs for learning disabilities, they were advised that there were few in the funding formula (Transcript — page 196, line 22).

She said that the team asked if they could interpret a congregated setting to be a 31(g). That is a 16 to 1 ratio in a self-contained satellite setting. They were told that they could (Transcript — page 196, line 25 — page 197, line 1). They were also told that they were under no obligation to congregate severe learning disabilities and, further, that placement in Halton is either self-contained or resource support.

When asked what impact a Tribunal order of primary L.D. and 1 to 8 would have on the Board, Ms. Kearney responded \$850,000. She said that as they are already overspent, that would cause her to cancel the program (Transcript — page 200, lines 15-17).

Reference was made to the fact that there are a number of the Ministry's documents which are under revision. Ms. Kearney said that they are "*caught between what was, what should be, and what will be*" (Transcript — page 203, lines 12-13). She explained that reference to "*program*" is the individual's instructional strategies that meet the needs and strengths of pupils, which is what an I.E.P. is all about. She said that it is paramount that their policies and procedures match the funding formula and match the program delivery, and that the Ministry's very clear on the program expectations and the service they expect Boards to deliver, and that they fund accordingly (Transcript — page 23, lines 19-23). Ms. Kearney explained that the student's class had 2.33 staff. They do core subjects and other subjects are integrated (i.e. physical education). She also explained that the Provincial schools are not effected by the funding formula. She did not answer the question of what cost the Board would incur for the student's education if it was pursuant to Regulation 298, Section 3 1(a).

Ms. Kearney was asked whether Regulation 298 fits into the placement scheme. She stated that placement is a choice between integrated and self-contained. They look at the profile of the student and make a determination based on that. There are no self-contained classes in Halton that are specifically for learning disabilities and have a classroom number of 8.

### **Cross-Examination by the Appellant**

The Appellant asked if the Board's budget was balanced, and was advised that it was. She also asked why Ms. Kearney, when asked about the student's placement, referred to costs that include other children. Ms. Kearney said that if a Tribunal ruled that a learning disability class was at 1 to 8, that would impact on both elementary and secondary. The Appellant asked what the costs would be if she had budgeted costs for the student in a self-contained classroom as per Regulation 298, 31(a). She said she had no idea (Transcript — page 225, line 2). The Appellant said that the student's class is at 6 to 1 and they are meeting their financial obligations. She also said that the Ministry is increasing funding over the next three years and they are in a position to afford the student's self-contained learning disabilities placement. But Ms. Kearney explained that her concern was with the children coming through the system that required self-contained placement or that would benefit from self-contained placement. She said that such an order from the Tribunal would be to eliminate students that may wish to access the program in the future (Transcript — page 225, line 25 — page 226, lines 1-2).

The Appellant concluded by referring to the statement in the 2000-2001 I.S.A. Manual which states that all special children deserve the services and supports outlined in the I.E.P.'s.

### **Mr. John Stieva**

Mr. Stieva is the Vice-Principal at Nelson High School and Chairman of the I.P.R.C.. He advised that on September 4, 1998, the student was moved from the elementary self-contained setting to a secondary self-contained setting, and that the Appellant had asked for the committee to reconvene to consider the placement decision. There was another I.P.R.C. on June 22, 1999, where the determination was made for the student to remain in a self-contained class with the ) identification of primary, communication — learning disability. He said that the Appellant was

advised that class size was not part of the I.P.R.C. determination (Transcript — page 14, line 9J 18).

Mr. Stieva explained his view that it did not matter if there were students with different exceptionalities like autism, or developmental delays in the classroom (Transcript — page 14, lines 2 1-23) and he argued that there was no change in placement for the student, as the student remained in a self-contained setting.

### **Cross-Examination by the Appellant**

The Appellant asked what a placement in a self-contained class means, and was told that the student would remain in the classroom 51% of the time. Mr. Stieva was also asked if Regulation 298 was considered in I.P.R.C. decisions, and if the Education Act and Regulations have to be followed. He said it applies as far as whether or not placement is self-contained or not. He said he doesn't think it is an important part of a placement decision to specify what kind of self-contained class you are making the decision under.

The Appellant then asked about the normal procedure for changes in placement, or identification, and was advised that the school presents the strengths and weaknesses, and the parent's role is one of consultation. Mr. Stieva also said that parental agreement or disagreement is noted and that neither the learning issues of the other children nor the number of children which will be in the class are an issue (Transcript — page 18, lines 19-25).

### **Ms. Jackie Stern**

Ms. Stern is the Principal at Lord Elgin High School. She explained that the second I.P.R.C. for the student became a discussion of strengths and needs, and that she was there to talk about the program offered. She said that the change from Lord Elgin to White Oaks was part of the Educational Plan.

Ms. Stern explained the concerns around the student's attendance, math, and problem solving, and said that the student was in a self-contained class for three out of four classes. She noted that as students proceed through programs, the goal is to integrate them into regular programs with resources. She also explained the accommodations for the student and said that they were not of such a nature as to lead to a loss of credits.

### **Cross-Examination by the Appellant**

Ms. Stern was asked if there was a written Transition Plan in place for the student when the student made the move from Grade 8 to Grade 9. She was advised that *there was a letter communicated to parents around what we would be doing*" (Transcript — page 31, line 15). She explained that Mary McCully who was in charge of the program had facilitated the program from the June period, and so she didn't know if the parents had been written to or not.

She was asked if any teachers had gone to her to discuss any concerns they had needing explanations regarding Dr. Steffy's report. She was told, they had not. Mrs. Abraham also asked what S.L.D. means in the student's I.E.P. She was advised that it means specific learning disability. She said that it is not a term that is used particularly at the secondary level; however, in terms of the elementary levels, it would be a student who had a learning disability that could not be accommodated within the regular classroom, and would benefit from a self-contained program (Transcript — page 33, lines 1-5).

### **Mr. Bill Demopolis**

Bill Demopolis is a S.A.L.E.P. Teacher who works with students under age 16 who are outside of the school setting. He was the program leader at the Satellite Unit in September 1998. His involvement was delivery of programs and services.

He explained that there were 11 students in the student's class, and set out which subjects were taught "*en masse*" and which were not. He also explained that the difficulties with the student centered on math, science and computers, and the student not using the homework room. He spoke about the student having to take some responsibility for the student's own education, and said the student's homework, punctuality and preparation had to improve (Transcript — page 51, lines 7-18). He also spoke about the student's "*spark*" for helping others, and the fact that he tried to move that "*spark*" over to other areas. However, he said that the student was inconsistent and "*shutdown*" and he didn't know why.

### **Cross-Examination by the Appellant**

The Appellant asked if it is usually a big transition for students moving from elementary to high school and was told that it is a transitional year for all students. He was asked if he had known this was the student's fifth school, and he said he was probably made aware of it, but was not certain. He also agreed that the student was consistently inconsistent. He was then asked about the computers that the student was to have access to and he indicated that there were a variety of programs in the computers. But, he said he did not have assistive software for those with learning disabilities. He stated that he had read all of the O.S.R. report, but did not meet or request a meeting with Dr. Steffy.

### **Ms. Marg Zavitz**

Ms. Zavitz is the Co-ordinator of Special Education in Student Services. She explained that as a result of the Municipal Freedom of Information and Protection of Privacy Act, they could not speak about the identification of other students who may be placed in a self-contained setting. The class profile is known only to the Principal and Teachers.

### **Mr. Tom Adams**

Mr. Adams is the Principal at White Oaks School responsible for the Satellite Program. He explained that the program began in February 1999 and was created for the students who were

at Lord Elgin but lived in Oakville. He discussed transition and said the Appellant didn't think it would be a problem for the student to make the move as the student's close friend was there.

Regarding program, he said children were in the self-contained setting for the first half of the day, and during the second half, they were integrated according to their option selections. In 1999-2000, there were 24 children within about 20 classes. There were three-plus full-time teachers, plus an instructional assistant in the student's class and six children had come over. He said that based on what is in the I.E.P., which is their plan of how they will accommodate the student, they are meeting the needs as expressed in that I.E.P.

Mr. Adams said the program meets educational needs but depends on a combination of student motivation and staff to create an enabling environment for learning. He also said that the student has good potential and normal intellect, yet the student is unmotivated, late for class, submits incomplete homework, doesn't accept help offered, and skips school. Mr. Adams said that the student poses an interesting dilemma because the student's day-to-day scores range from 30-50%, yet in some final exams, which demonstrate a higher order of learning, the student scores significantly higher. He described the teaching strategies for the student as pre-taught vocabulary, associative teaching, self-pacing, preferential seating and the F.M. system (although he said after the first few weeks that the student stopped using it). He also said that the school just recently received the I.S.A. claim, which consisted of a notebook computer, with peripherals, which would be available to the student. He explained that none of the services mentioned would be impacted by class size.

Although he stated the student had not had academic testing since [the student's] arrival at the school, each student at the end of the semester has their progress reviewed, and a variety of strategies are identified.

He explained that there is no satellite for O.A.C. because if a student is going to post-secondary, they will be successful in a traditional college/university setting at the completion of the program. He also explained that they want to discuss a co-op program with student for grades 11 and 12. Co-op provides students with the opportunity to receive practical experience in the kinds of things that they would be involved with in a future career.

When asked if it was in the student's best interest to be in a class of learning disabilities, he said *"that 's not the kind of world we operate in"*. Mr. Adams said that when the student feels accountable for [the student's] learning and understands that there are consequences in decisions that [the student] makes, the student will solve [the student's] problems. He does not think that a class of only severe learning disabilities would be in the student's best interests.

### **Cross-Examination by the Appellant**

The Appellant asked about the student's Individual Education Plan, wanting to know where the goal statement is. He explained that the I.E.P. focuses on strengths and needs and doesn't necessarily reflect goals. In fact, he said that the I.E.P. statement does not contain a list of

goals. Mr. Adams explained that the transition plan would again make an attempt to reflect the strengths and needs that have been agreed to through the review process. Regarding the Assessment Strategy within the I.E.P., he explained that students are assessed by the acquisition of credits and success in daily learning and assignments. He listed certain accommodations to assessment strategies, and discussed the Appellant's frustration with the I.E.P. format. He also discussed the educational problems, which flow from the student's lateness for class, skipping school and the consequences for such behaviour.

Regarding Regulation 298, Section 3 1(a), the Appellant asked if that is best practice for severe learning disabilities. He said he was not sure. He said that it is his understanding that the Regulations are the guidelines that determine how a Board delivers service. Although he did say they have the weight of law, the Board must meet what is outlined in the Act and Regulations (Transcript — page 115, lines 12-16).

### **Direct Evidence of the student**

The student said that it is hard to get the attention [the student] needs in the present class. But if the student is in a class with 16 students, it will be twice as hard. The student explained the need for more individualization and teachers to provide the student with a different approach. The student said that [the student] was told that Trillium would be a bit too easy for [the student].

### **Closing Statement by the Appellant**

The Appellant summarized the testimony given by her witnesses throughout the hearing, which included Mr. Hodder's statement that "*Trillium School is not an alternative to the School Board's obligation*" (Transcript—page 129, lines 15-17).

The Appellant requests that the Tribunal in their decision comment on the School Board's action concerning process. She stated that she is concerned that if nothing is said "*the Board will put in front of other parents the same barriers they have put in front of us to utilize the right to due process*" (Transcript—page 128, lines 16-19).

She states she has "*provided evidence to show that the student has learning disabilities of a severe nature. The student requires a highly individualized approach if {the student} is to benefit from education*" (Transcript — page 129, lines 1-4).

She requests that the Tribunal order the Halton District School Board to place the student in a self-contained class for students with learning disabilities according to Regulation 298, Section 3 1(a) (Transcript—page 132, lines 3-7).

She requests that the placement decision be a meaningful one; that the placement provides for the types of individualized special education programs that the student requires ... (Transcript — page 132, lines 16-22).

The Appellant requests that the placement provides the agreed-upon accommodation outlined in the need's statement of the I.P.R.C. on June 30, 1999 (Transcript — page 133, lines 1-3). She requests teachers with the appropriate level of expertise in the area of learning disabilities. She requests that the placement provides the student with access to the regular curriculum and/or courses available to the regular students (Transcript — page 133). She requests an

I.E.P. based on the statements of strengths and needs as agreed to in the decision of June 30, 1999, including a transition plan that fulfills the legislation requirements of Regulation 181/98 (Transcript — page 134, lines 1-6). She is requesting her cost as outlined in Exhibit 1, Tab. 4. She concludes by requesting assurance that the student will have access to an appropriate placement for the rest of her school years (Transcript—page 134, lines 9-13).

### **Closing Statement by the Respondent**

With reference to jurisdiction, Mr. Keel argued that you cannot appeal the issue of severe learning disabilities nor can you appeal numbers in a class or programs or service. He stated that the Act is clear as to how it is structured and what the jurisdiction is. Regulation 181 deals with identification and placement only. Programs and services are dealt with under the Plan and I.E.P. and are enforceable between the Board and the Ministry (D.). The identification and placement process identifies students under ministerial categories of integrated and congregated. He also explained that Section 17 of the Regulations makes the presumption of integration and the E. case supports it. He argued that 1 to 8 or 1 to 16 is not a change in placement, it is an issue of programs and services (Transcript — page 138, lines 24-25). He explained that it was confirmed to Brenda Kearney from the Ministry that under the funding model they could have less than 16. However, class size depends on the numbers of children that will go into the program. It is a matter for the plan, which is “*as between the Board and the Ministry ...*” (Transcript — page 140, line 5). The plan establishes the classes and structure. The I.P.R.C. determines who will attend the classes.

With reference to the use of the word severe, Mr. Keel referred to Mr. Hodder’s testimony that the intent around Section 31(a) was with respect to Provincial Schools, although it also applies to Boards. He argued that with respect to the issue of severe they are “*under 298*”. It is not within the jurisdiction of the Tribunal (Transcript — page 141, lines 24-25). The Ministry “*does not allow Boards currently to identify kids as severe learning disability, only as learning disability*” (Transcript — page 142, lines 15-17). There is a funding model, program model and regulatory model and the Ministry doesn’t provide for severe. However, for the I.S.A. there is a provision for severe that has a funding purpose. To qualify for severe, I.S.A. level 2, a person must be diagnosed with severe learning disabilities, must have A.D.D. and the program modifications for more than 50%, therefore gaining no credits (Transcript — page 144, lines 4-12). If a student is in a congregated class with credits, they cannot get I.S.A. level 2, nor is that program modified to the extent to be in an integrated setting without credits.

Mr. Keel said that Dr. Steffy’s reports are not relevant with respect to the determination of severe learning disabilities under Section 31(a) because he refers in the first report to the student having a moderately severe learning disability. In his June 2000 report, he refers to the student as having a “*fairly severe learning disability*”, and in evidence he spoke about the student’s disability being “*so severe*”. He didn’t use the Ministry materials to deal with the concept of severe learning disability because it wasn’t relevant to the educational perspective. We are talking “*apples and oranges*” (Transcript—page 145, lines 16-25). Mr. Keel said there is no standard for the determination of severe learning disability and stated that Section 31(a) needs to be revised. He said that given the student’s test results, which reflect that the student has progressed, somebody is doing something right. He concluded that they are not dealing

with a severe learning disability because the definition of I.S.A. level 2 does not fit, and Section 31(a) is not under the Tribunal's jurisdiction. He re-emphasized that Halton is one of the few Boards offering congregated classrooms and noted that it is within the jurisdiction of the Board to eliminate them as other Boards have as a result of their funding models.

He referred to Ms. Kearney's testimony as clearly stating that if they did have to go with 1 to 8 pure learning disabilities, the investment would be \$800 - \$850,000.00 which would give the Board the right to terminate the congregated classes (Transcript — page 152, lines 21-23). Mr. Keel said it is better to have 1 to 16 than none at all. Referring to the best interests of the child, Mr. Keel stated that the issue is not class size, per se, as Mr. Hodder had said that a program of 1 to 11 (grade 9) was a great program. He also stated that Mr. Adams confirmed that numbers aren't the issue. He said that all the witnesses agreed, it would not be in the student's best interests if all of the students were primary learning disabled. He said that there are pedagogical reasons for having larger classes (Transcript — page 154, line 10 — page 155, lines 1-20).

He stated that the only issue for the Tribunal is whether or not there is jurisdiction to deal with the concept of severe learning disabilities, class size, etc. He submits there is not.

In conclusion, Mr. Keel stated on behalf of the Board, that the Tribunal should not order anything, as there is no jurisdiction. The child should be left in the congregated classroom because of the pedagogical evidence. He stated that there are some needs for change. But argued that "Anytime there has been an issue identified, it has been resolved or at least there is an attempt at resolution; the F.M. system, the computer, new computer coming, that individual computer which is not something that every student has" (Transcript — page 159, lines 11-16).

He explained that in reality, *"the structuring of the Act and Regulations is that the Board has a legal obligation to provide those services, the parent has a right and responsibility to be involved, and the Ministry, in effect, is the final arbiter; not the I.P.R.C'. and not the Tribunal when it comes to programs and services"* (Transcript — page 159, lines 20-25).

### **Closing Statement in Reply by the Appellant**

The Appellant replies by restating *"a parent has the right to disagree with that placement decision and the right to be heard on it"* (Transcript — page 161, lines 4-7). She refutes Mr. Keel's argument that the funding model and the special education plan dictate the kinds of services available but rather they *"have nothing to do with placement decisions. They're irrelevant"* (Transcript—page 161, lines 13-18).

She states *"Mr. Keel is not qualified in terms of questioning Dr. Steffy's diagnosis of the student having learning disabilities of a severe nature"* (Transcript — page 162, lines 6-8). She ends her reply by stating *"in the end the placement decision is about the student and is about the best interests of the student"* (Transcript — page 162, lines 14-16).

## **Decision**

The Tribunal finds that the student's placement as determined by the I.P.R.C. of June 22, 1999 is necessary, appropriate and reasonable to meet the student's educational needs. We find that the current placement does reflect that a change in placement has been made.

## **Basis for the Decision**

Based on the testimony of the witnesses called and the documentation presented by the Appellant and the Respondent, the Tribunal orders that: the student remain in the Satellite Program and that the Halton District School Board comply with the requirements as set out in Regulation 181. Pursuant to Regulation 181 6(b), the Tribunal orders the equipment purchased for the student with the I.S.A. Grant be utilized in the student's daily learning program to enable the student to become an independent learner.

## **Reasons for the Decision**

1. Regulation 298 and Regulation 181 are in full force and effect in Ontario.
2. The funding model does not supersede Regulations.
3. The Tribunal finds that pursuant to Regulation 298, there was a change of placement from a class with a maximum of eight students (Regulation 298, Section 3 1(a) to a class of mixed exceptionalities (Regulation 298, Section 3 1(g).
4. A school board is required to respond to a parent's Notice of Appeal. The Board did not comply with the requirement of Regulation 181, Section 26(1).
5. The Board failed to recognize its responsibilities under Regulation 181:7(4) for the development of a comprehensive I.E.P., which includes a Transition Plan.

Wayne Tompkins                      Chairman

Judith Ross Hendin                  Member

Marilyn Thain                         Member

October 30, 2000