



ONTARIO SPECIAL EDUCATION (ENGLISH) TRIBUNAL File #7

IN THE MATTER OF the *Education Act*, R.S.O. 1980, c.129;
IN THE MATTER OF Ontario Regulation 554/81, Regulation made under the *Education Act*;
AND IN THE MATTER OF the minor child born in 1979;

BETWEEN

L. AND L.

Appellants

- and -

THE YORK REGION BOARD OF EDUCATION

Respondent

Tribunal Members:

Tom H. Houghton	Chairman
Hilda Carmichael	Member
Grant R. MacDonald	Member

For the Appellants:

David Baker

For the Respondent:

Brenda J. Bowlby

The hearing was held in Mississauga on June 14, 17, 21, 24, and July 11, 12, 1985.

The appellants, on behalf of their child had originally applied to the Ontario Special Education (English) Tribunal (hereinafter call the "Tribunal") under subsection 36(1) of the *Education Act* (hereinafter called the "Act" for a hearing for leave to appeal to a regional tribunal in respect of the identification and placement of their child as an exceptional pupil, by The York Region Board of Education (hereinafter called the "Board"). Subsequently, both parties agreed, under subsection 36(3) of the Act, to request the Tribunal, in lieu of granting leave to appeal, to hear and dispose of the appeal.

Jurisdiction

Before the Tribunal can consider the matter and render a decision, the question of its authority to hear the case must be examined.

In the evidence presented at the hearing it is clear that the child at no time has been in attendance as a pupil in a school operated by the Board. The parents indicated to the principal of Maple Leaf Public School in March 1984 that the child would be presented for enrolment in a Kindergarten class when school opened, but the child did not attend and the child's name was never placed on the register of the school. Therefore, under the provisions of subsection 32 (4) of the Act, it is our opinion that the child is not a resident pupil of the Board.

Further, subsection 36 (1) of the Act is specific in granting the parent of a pupil the right to appeal to a special education tribunal "in respect of the identification or placement of the pupil as an exceptional pupil...." As the child is not a pupil in attendance at a school operated by the Board, it is clear that this Tribunal does not have jurisdiction to hear this appeal.

Notwithstanding this situation, there is no question that both parties have acted as if the child had been a pupil. Both parties have arrived at this hearing by mutual consent and in full awareness of the jurisdictional problem. The Tribunal has joined in the spirit of seeking a resolution to the dispute for the child's sake. If the Tribunal has erred, it has done so knowingly and, it believes, in the child's best interests. Consequently, we have agreed to consider the evidence placed before us, and to render a decision as if we indeed had jurisdiction.

The Appellants' Request

The appellants request that their appeal be granted, and that the Tribunal order the child to be identified as a multihandicapped child and, in order to meet the child's needs, be placed in a regular Kindergarten or Grade 1 class at Maple Leaf Public School, with assistance to the teacher provided by a teacher's aide and other support staff as needed.

The Respondent's Reply

The respondent requests that the Tribunal order that the decision of the Identification, Placement and Review Committee (hereinafter called the "I.P.R.C.") of the Board of October 1, 1984 which identified the child as exceptional, trainable retarded, be confirmed, and further that the child's placement in Fairmead School for the Trainable Retarded also be confirmed, and that the appeal be dismissed (see

Counsel for the respondent's written response, p. 6).

The Appellants' Presentation

In her testimony, the appellant states that for three years the child attended integrated day care programs where the child and the parents received support services from the Children's and Infants' Developmental Services (hereinafter called "C.I.D.S.") of the Department of Health and Social Services of the Regional Municipality of York.

The appellants agree that the child is exceptional but should not have been identified by the I.P.R.C. as trainable retarded. She states that, at the age of 16 or 17 days, the child suffered a brain haemorrhage which resulted in stiff movements on the child's right side, an inability to walk, some vision problems and difficulty in feeding. The appellants, therefore, contend that the child should be identified as multihandicapped.

The appellant states that she examined possible placements for the child: Fairmead School for the Trainable Retarded, Maple Leaf Public School, Holland Landing Public School where a class for multihandicapped pupils is located, and the Ontario Crippled Children's Centre (now called The Hugh MacMillan Medical Centre). She contends that the child should be placed in a class, preferably a Kindergarten class at Maple Leaf Public School, with non-handicapped children where the child can benefit from peer interaction. The appellant states that a placement with retarded pupils or other pupils who are handicapped, will not be conducive to the socialization skills that the child needs. The appellant feels that the child could be assisted by a teacher's aide. The child will also require help from a physiotherapist, occupational therapist and speech teacher on a regular basis.

Mrs. Sue Mosten, Supervisor of C.I.D.S., provides information concerning programs in the various pre-school day care centres and nursery schools of the Region, and states that the child made gains in the integrated classes in these programs. She claims that the trend is to integrate handicapped with non-handicapped children in pre-school programs.

Mrs. Karen Simonds, an early childhood home educator at the Newmarket Day Care Centre, describes the day care services generally and the specific program provided for the child. She states that the child's socialization skills had improved, the child's attention span had increased to ten minutes, and the child had begun to learn to feed with some verbal help. The child also began to eat "finger" foods, began to move about four feet at a time by creeping, began to initiate activities with other children, and used pictures to communicate with others. She says it is difficult to know what the child understands and learns, but believes that the child learns through continuity and by imitation of peers.

Mrs. Simonds testifies that the child needs, in addition to a teacher and a teacher's aide, a physiotherapist, occupational therapist and a speech teacher, and that the child should be placed with [the child's] peers with activities geared to that age group. She agrees with the mother's requested placement for the child.

According to the testimony of Mrs. Marie Thomson-Mintz, early childhood resource educator with C.I.D.S., the child attended the Newmarket Day Care Centre Regional Integrated Program from October 1982 until June 1984. From June 1984 until June 1985 the child was enrolled in a community integrated program called Fidgets offered by Newmarket Parks and Recreation Department and a program at the Public Library, and Mrs. Thomson-Mintz states that “the child will continue to be integrated into community programs until suitable school placement has been found by the parents” (Exhibit 10).

Mrs. Thomson-Mintz, using the locally modified Vulpe Assessment Battery and the Portage Assessment Guide (see Exhibit 10), reports the following developmental levels as of June 1985 when the child’s chronological age was six years:

Socialization:	21 months
Self-Help/Independence:	14 months
Language/Cognition:	12 months
Motor:	9 months

Miss Carol Ann Young of York Support Services Network, testifies that she has worked with the child and the family for two years and has observed the child both at home and at the day care centre the child attended, and describes the assistance she gave the appellant in her quest for a suitable placement for the child.

Mrs. Mosten, Mrs. Simonds and Miss Young, in their descriptions of the various day care programs in existence in York, point out the integrated nature of the programs that include both handicapped and non-handicapped children. They contend that these integrated programs should be extended into the public school system. They agree that the child should have the opportunity of enrolling in a regular class with the necessary support personnel.

Dr. Donald R. Kennedy, consulting psychologist, engaged by the parents to conduct an assessment of the child, testifies that he talked to the parents about the child, reviewed other reports, and observed the child at home and at the day care centre. He states:

“Unfortunately, with the impairment to the child’s left hemisphere, and with the motoric, verbal and visual receptive functions involved, it becomes very difficult to assess the child in terms of other brain functions, much as it is difficult to assess the awareness and learning potential of the young severely handicapped cerebral palsied child” (Exhibit 9, p. 16).

Dr. Kennedy hesitates to label the child beyond the general category of exceptional, although he suggests, if pressed, that the child might be classed as multihandicapped.

Dr. Kennedy believes that seriously handicapped children can improve socially with a strong program, either with peers in a regular class or, alternatively, in what he calls a diagnostic class with a view to more permanent placement later. He is “not happy” with a placement for the child in a class of trainable retarded pupils.

Dr. George Flynn, Superintendent of Special Education for The Metropolitan Separate School Board, testifies that based on his review of the three reports made by Mrs. Thomson-Mintz, Dr. Kennedy and Mrs. Sharon Carson, diagnostic and resource teacher (hereinafter called "D.A.R.T.") of the Board, there are gaps in the child's development. He believes that the child should be observed for extended periods at different times in order to arrive at a valid assessment. He claims that, at the present time, he would identify the child as exceptional only, and would not add any other label.

Dr. Flynn testifies that in schools operated by The Metropolitan Separate School Board, three pupils "whose profiles would read very much like the child's", have been integrated on a full-time basis with pupils in regular classes. He notes that none of the three was placed in a regular class in a home school because of the need for very careful selection of the teachers.

In summary the appellants indicate that although the parents originally wanted the child to be identified as exceptional only, they now request that the child be identified as exceptional, multihandicapped.

The appellants argue that, even if the child were to be identified as trainable retarded, it may not be construed to be compulsory for the Board, under section 72 of the Act to place the child in a segregated class for the trainable retarded. They state that the child made great strides in the various integrated settings of the pre-school programs, and insist that the child should continue to have the opportunity of association with non-handicapped peers as role models when the child begins regular school attendance. Such a placement has great potential for the child's social development.

The Respondent's Presentation

The respondent agrees that matters of identification and placement are in contention. They maintain that the onus is upon the appellants to show that both the I.P.R.C. and the Special Education Appeal Board erred when they identified the child as "exceptional, trainable retarded" and recommended the child's placement in Fairmead School for the Trainable Retarded.

The respondent contends that identification of the child as exceptional, trainable retarded, and placement of the child in a self-contained classroom in Fairmead School supported by a speech pathologist, physio- and occupational therapists as well as some limited integration at Maple Leaf School, is the most appropriate identification and placement for the child and in [the child's] best interests.

Mr. John Laughlin, Superintendent of Special Education for the Board, describes the Board's four categories of integration: physical, social, academic and community. Referring to pages 3-5 of Exhibit 18 of the Review and Consolidated Report of Special Education Plans, Programs and Services for 1985 (hereinafter called "the Board's Education Plan") Mr. Laughlin outlines the programs available in the Board's plan for each area of integration. Mr. Laughlin emphasizes that integration, in any or all of the four categories, must benefit not only the child, but also be in the best interests of all other pupils in the class.

The respondent notes that Fairmead School will have in September 1985: 18 pupils aged 6-21, with four teachers, four teacher's aides, a part-time principal, a nurse, a physio- and occupational therapist,

and speech and language support. The child would be placed in Mrs. Saunders' class with four other pupils aged 6, 8 and 9.

Noting the guidelines for admitting trainable retarded pupils to integrated classes in regular schools Mr. Laughlin refers to Exhibit 21: "Guidelines for Admission to Integrated Programs for Trainable Retarded Students", which he states is taken from part of a parents' handbook. He points out that the child would not qualify at present for integration. Mr. Laughlin, in testimony and exhibits, establishes that the child is properly identified as an exceptional pupil - trainable retarded, under the definitions of the Ministry of Education in the Special Education Information Handbook 1984, p. 17. Mr. Laughlin testifies that the child is not educable retarded because the child is unable "to profit educationally within a regular class with the aid of ... considerable ... supportive services". Further, as the child shows "limited potential for academic learning, independent social adjustment and economic self support", the child's proper identification is trainable retarded and the most appropriate placement is Fairmead School. Mr. Laughlin notes that the child:

- o manifests infantile behaviour;
- o is not toilet trained;
- o has limited academic potential;
- o manifests many of the characteristics of developmentally handicapped children;
- o is not able to self-protect;
- o requires a physio- and occupational therapist;
- o has a short attention span.

Mr. Laughlin contends that to "mainstream" a "developmentally delayed" child of this child's level, would require every regular class teacher to have special education qualifications, would frustrate the child, would disperse the intensive resources exceptional pupils require, and would also probably mean that the teacher's aide would do most of the teaching of the child.

Mr. Laughlin also points out that a multihandicapped identification and placement would not be appropriate for the child as the Board's multihandicapped classes are at a significantly higher functioning level.

Mrs. Sharon Carson, a D.A.R.T. and head special education teacher at Maple Leaf School, presents the results of the tests based on the Bergance Inventory of Early Development (Exhibits 24 & 25) conducted May 27-29, 1985. Mrs. Carson states that "most of the child's developmental skills demonstrated during this assessment appear to be between the five- to ten-month range. Language development is markedly delayed as the child did not respond to oral language without accompanying gestures" (Exhibit 24, p.5). Mrs. Carson also notes that expressive language is confined to pushing away the instructor's hand, raising of hands to mother, and tugging at mother's clothing. Mrs. Carson recommends that an "individual developmental program be provided for the child within the segregated school for the trainable retarded" (Exhibit 24, p.5).

Through the testimony of Mrs. Gwen Mann, an operations consultant and D.A.R.T. with the Board, the proper placement is Fairmead School with additional support because the child needs intensive and extensive work in mobility, communication and self-help. Mrs. Mann testifies that the child would be

basically “a spectator” in the regular kindergarten class, with or without an aide.

Dr. Glen DiPasquale, Board psychologist, testifies to the need for extensive structured and unstructured tests and observations in order to obtain a reliable psychological assessment of the child. Dr. DiPasquale takes considerable issue with both the procedures and recommendations of Dr. Kennedy’s report (Exhibit 16). Dr. DiPasquale’s opinion, based on testimony given during the hearing, is that the child is trainable retarded, “developmentally delayed”, and should be placed at Fairmead School.

Mrs. Mosten, under cross examination, testifies that assessments of the child’s cognitive level may not be valid because of the child’s inability to speak, and she agrees that the child is “severely developmentally delayed”.

Mrs. Karen Simonds, also in cross-examination, states that it is difficult to know what the child understands and learns, the child has no speech but makes sounds to gain attention of others.

The respondent, in summary, argues that the Tribunal is “limited to the four corners of the Board’s Educational Plan as approved by the Ministry of Education” in any judgment or orders it may make, and urges the Tribunal to dismiss the appeal.

Basis for Decision

From testimony and argument, the Tribunal concludes that there are two options for consideration:

1. If the child is identified as trainable retarded, then the most appropriate placement is in a class for the trainable retarded;
2. If the child is identified as multihandicapped, then the child can be placed in either
 - (a) a regular Kindergarten or Grade 1 class, with support personnel; or
 - (b) a class for the multihandicapped.

On the basis of our review of the testimony and exhibits presented, we note that the child:

- cannot stand or walk;
- does not speak;
- has little movement on [the child’s] right side;
- can sit up with support for 15 to 20 minutes;
- has difficulty holding [the child’s] head erect;
- has vision problems;
- has difficulty in feeding and chewing;
- does not dress;
- is not toilet trained.

The cumulative evidence cited above points the Tribunal to the conclusion that the child is multihandicapped. We note the definition of multihandicapped on p. 18 of the Special Education Information Handbook 1984:

“a combination of learning or other disorders, impairments, or physical handicaps, that is of such nature as to require, for educational achievement, the services of one or more teachers holding qualifications in special education and the provision of support services appropriate for such disorders, impairments, or handicaps” (emphasis ours).

The child may also be mentally retarded but the lack of reliable and objective assessment results of a child with a severe communication impairment prevents us from making an objective conclusion as to the child's intellectual level. Even if such evidence were to indicate trainable retardation that would be one factor to be included in identifying the child as multihandicapped.

On the question of placement, we have great difficulty with the suggestion that a child with such severe limitations in communication, mobility and motor co-ordination can have [the child's] educational and other needs met in a normal setting with 25 or 30 other pupils. Despite the urgings that integration now carried out at the pre-school day care level be continued into the elementary school, we note that these are two qualitatively and quantitatively different settings. The purposes of day care are different, the objectives are different, and the expectations for the children are different. Socialization and peer group stimulus are important but not the sole objectives of elementary education. The Tribunal notes that Dr. George Flynn who pointed to three pupils similar to the child being placed in regular Kindergarten classes, is careful to note that great care in the selection of teacher and class is essential. The three pupils are not placed in their home schools because of such careful selection. Dr. Flynn also admits that a great many more exceptional pupils are placed in segregated special environments within his board's jurisdiction. Dr. Kennedy referred to “diagnostic class placement” as being worthy of consideration.

We concur that the testimony which we heard from witnesses for both the appellants and respondents that the child needs specialized and skilled care, particularly training and teaching carried out by professionally qualified people, in order to establish the child's communicational capabilities. While the Tribunal is sensitive to the contention that peer stimulus is important, it is equally convinced that much more is needed for the child in a setting that will enhance the child's development. Furthermore, the Tribunal questions the wisdom of requiring a regular classroom teacher (even a hand-picked one), who perhaps is not qualified or trained to handle a severely handicapped pupil, to provide a learning and growing environment appropriate to the child's needs on what is essentially a one-to-one relationship, with or without an aide.

In addition, the Tribunal sees serious problems with respect to the educational needs of other pupils in the class. To justify such a placement on the grounds that it aids the other pupils in becoming sensitive to handicapped children is to miss the essential point, namely, the most appropriate environment to learn for all the pupils in the class.

Finally, the Tribunal sees that the teacher's aide would likely become the primary care-giver and "teacher" in this setting for the child, and we do not believe that would be in the child's best interest.

We feel strongly that everything possible must be done in therapy and teaching to assist the child to develop to a point where the child's capabilities can be more fully assessed. The child requires the specialized support of a physiotherapist, an occupational therapist, and a communication specialist, as well as others, on a regular basis. We therefore reject the option of regular Kindergarten or Grade 1 placement.

From evidence the Tribunal learned that the Board operates at least one class for the multihandicapped at Holland Landing Public School where the specialized services referred to above are available on a regular basis. The Board contends, however, that the pupils in the multihandicapped class at Holland Landing Public School function at a much higher level than the child, thereby creating the strong possibility of frustration for the child. That may be so, but the Board, under the provisions of the Act, is required to provide education appropriate to the child's needs. The Board should, therefore, re-examine the organization of its programs for the multihandicapped in order to meet the varied needs of its multihandicapped pupils. We believe that the present multihandicapped class, suitably modified, may well meet the child's many needs, since it already has the special services of the teacher and other support personnel as well as opportunities for integration with other pupils in the school. This option, therefore, appears to be most appropriate and in the child's best interest at this time.

Decision

The Tribunal, having examined all the evidence presented and having weighed hearsay and untested evidence accordingly, finds under subsection 36 (6) of the Act that there are sufficient grounds to grant the appeal in part, as it relates to identification of the child. As noted in the Basis for Decision, the child's exceptionalities are more properly identified as multihandicapped than trainable retarded. We find the child to be exceptional, multihandicapped.

In connection with placement, the Tribunal directs that the child be placed in a class for the multihandicapped suitable for the child's needs, and that the Board provide such placement with an appropriately modified program within a reasonable length of time after the child's enrolment in school.

There is no order as to costs.

T. H. Houghton, Chairman

Member

Member

September 10, 1985