



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 student, born 1967;

BETWEEN

H

-and-

The Timmins Board Of Education

Tribunal Members:

| | |
|-------------------|----------|
| Tom H. Houghton | Chairman |
| Denis R. Levesque | Member |
| Donald C. Thrush | Member |

For the Appellants:

J. Kenneth Alexander

For the Respondent:

Rino C. Bragagnolo, Q.C.

The hearing was held in Timmins, Ontario on June 25, 26, and 27, 1985.

INTRODUCTION

The appellants had originally applied to the Ontario Special Education (English) Tribunal (hereinafter called "Tribunal") under subsection 36(1) of the *Education Act* (hereinafter called "Act") for a hearing for leave to appeal to a regional tribunal in respect of the placement by The Timmins Board of Education (hereinafter called "Board") of their child as an exceptional pupil. 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.

The Appellants' Request

Mr. Alexander, representing the appellants, contends that the placement proposed for the student for the 1984-85 school year by the *Identification, Placement and Review Committee* (hereinafter called "IPRC") of the Board, is neither adequate nor appropriate to his needs, and requests the Tribunal to set aside the decision of the IPRC. He further requests the Tribunal to state that an adequate placement is not available elsewhere in the Province of Ontario.

The appellants also request that they be reimbursed for their actual out-of-pocket expenses incurred, including tuition, room and board and travel costs in enrolling their child in a private school during the 1984/85 school year, and further that they be reimbursed for all similar expenses that may be incurred during the next school year if an appropriate placement is not offered by the Board for that school year.

Mr. Alexander also requests that his clients' costs in connection with the hearing be paid.

The Respondent's Reply

Mr. Bragagnolo, appearing for the respondent, insists that the Board is able and prepared to provide the placement determined by the IPRC, and requests the Tribunal to dismiss the appeal with costs paid to the Board.

The Appellants' Presentation

Mr. Alexander states that the issue before this Tribunal is the adequacy of the program provided by the Board for the student and the availability of resources required for the provision of the program. It is the position of the appellants that the Board erred in claiming that it was able to provide an adequate program.

Drawing on testimony and exhibits presented by the appellants, the Co-ordinator of Special Education, the Grade 8 teacher and the student, Mr. Alexander points out that the student had not encountered success at school in the course of the student's attendance at the secondary school (hereinafter called "SS."). During the year 1983/84, the student had failed to earn a single credit toward [the student's] secondary school graduation diploma.

Mr. Alexander argues that the proper identification of the student's difficulties came as a result of a private assessment by Dr. Berenice S. Mandelcorn of the Mandelcorn Clinic in Toronto. The student was identified as having a learning disability. The Mandelcorn report (pages 97 to 106 of Exhibit 1) also indicates a number of recommendations concerning appropriate programming to meet the student's special needs:

1. Daily help in the Resource Centre of the school in written language, organization and study skills, spelling and math (sic);
2. Remedial help after school is recommended to assure progress;
3. Teachers should be made aware of the nature of the student's problems and adopt strategies to suit the student's needs;
4. A possible alternative to help the student is a private school placement, in a school such as the Gow School;
5. We recommend family counselling to help the appellants and the student deal with the student's problems most effectively.

The student's father states that the Mandelcorn report was turned over to the school soon after its receipt by the parents (end of June, 1984). The letter to the appellants from the Superintendent of Schools - Program for the Board, dated August 15, 1984 (page 88 of Exhibit 1) acknowledged the Mandelcorn findings and indicated that the Board was prepared to provide a program in support of the first three recommendations.

The student's father contends that, after three years of attendance and unsuccessful attempts, there is no evidence to indicate that the Board would be able to provide an adequate program for the student. Furthermore, the student had become depressed. The behavioural difficulties evident at school were not occurring at home, according to the student's father. He feels that the placement at the Gow School was his child's last chance for academic success, and indicated that the tuition cost of \$10,000 (U.S.) was equivalent to about \$17,000 (Can.). The student's father says that he had serious doubt that the program outline devised for the student at the IPRC meeting of August 8, 1984, would be available.

In her testimony, the student's mother indicates that she attended the IPRC meeting of August 8. She states that she did not feel that the Board could provide a suitable program for her child. She felt that the IPRC meeting of August 8 served no useful purpose and was a waste of time. There was no indication that a program was going to be available and there was no specific reference to the Mandelcorn findings. She claims that the student's Grade 8 teacher was the only member of the Committee who had been involved in the educational program provided for the student.

The Co-ordinator of Special Education for the Board, indicates that the student's difficulties had been present since the student's enrolment in Kindergarten. She feels that these difficulties were compounded by adjustment problems after admission to S.S. The Co-ordinator of Special Education refers to Exhibit 1 supporting the presence of learning problems but not identifying the problem as a learning disability.

The Co-ordinator of Special Education drawing evidence from Exhibit 10, p. C-24 and p. 33 (XLVII)

concerning the planning process and the nature of the program, explains the educational services planned for the student by the Board. She says she had concerns then (September 1984) and now (June 1985) about the Board's ability to meet the requirements of some recommendations, especially the one that dealt with program modification. She could not see how the two-period-per-day plan would work for the student. The Co-ordinator of Special Education contends that time was a significant factor in the student's case (as presented by the appellant) in light of the funding policy of the Vocational Rehabilitation Services of the Ministry of Community and Social Services for learning disabled pupils to attend private schools.

The student's Grade 8 teacher states that he was aware of the pupil's difficulties with the student's school work. Program modification and special materials had brought some improvements at the end of Grade 8. Consideration was given to have the student repeat Grade 8 but after further discussion the student was promoted to Grade 9.

The student admits that after Grade 5, the student had not put a great deal of effort in school work mainly because of disbelief in the student's own abilities.

Under cross examination, the Superintendent of Schools indicates that the IPRC had not recommended a private school placement for the student because such an option is not open to the Board. She also explains that the appellants were not apprised of the Trillium School possibility because the student had been withdrawn from S.S. and enrolled in the Gow School.

In his summary, Mr. Alexander claims it is not reasonable to expect that the Board, after twelve years of trying, would have been able to provide a suitable program for the student. There has been no supportive elements except for the document presented as Exhibit 11 (Proposed Action Plan) describing the program that would have been available. Referring to the "Cascade Model", he indicates that the Gow School is one of the options open to school boards. Because of the student's age, the deadline for the student's enrolment at Gow was September 1984. This option would not have been available after September 1985. Mr. Alexander claims that the pupil is hard to serve and further, that the Board can purchase from other sources, even outside Ontario. Mr. Alexander requests that the Tribunal review the evidence and decide on these grounds rather than giving consideration to the decisions arrived at by the IPRC and the Special Education Appeal Board.

The Respondent's Presentation

Drawing on testimony from the Vice-Principal of S.S. and the Superintendent of Schools, and exhibits, Mr. Bragagnolo argues that the Board is prepared and capable of providing a special education program suitable to the student's needs as outlined in the Mandelcorn Report.

The Vice-Principal of S.S. recalls the problems encountered by the student as being mainly adjustment and maturity in nature. It was in June 1984 when the Mandelcorn report was received at the school that the question of learning disabilities was first raised. The Vice-Principal did not attend the IPRC meeting of August 8 but was advised of its recommendations a week or so later. He feels that the recommendations of the IPRC could have been handled by the school, indicating that he had discussed them with the special education resource teacher at S.S. He attended the IPRC meeting of

November 7 when Dr. Mandelcorn's recommendations were again discussed. He claims that the Committee (the Co-ordinator dissenting) came to the conclusion that the school could implement the first three recommendations but not numbers 4 and 5 as they fell beyond the school's jurisdiction. He agrees that this was his first knowledge of the Co-ordinator's disagreement with the IPRC recommendations. The Vice-Principal adds that the special education resource teacher, who also attended the November IPRC meeting, and the teacher in charge of the learning enrichment services program were both to be involved in the special program for the student. In addition to the resource room program, individual assistance is offered by members of the teaching staff from 3:15 to 4:00 p.m. to pupils with special needs; moreover, special tutors can be hired to provide additional help after 4:00 p.m.

The Vice-Principal reports that the school was made aware at the end of August 1984 that the student had been enrolled at the Gow School.

The Superintendent of Schools referring to Exhibit 1, explains that the I.P.R.C. based its decision of August 8, 1984 on the staff's educational assessment report and on the Mandelcorn report. She chaired the Committee whose members were the Grade 8 teacher, the Co-ordinator of Special Education and the special education resource teacher. The student's mother attended this meeting. Only the student's mother raised concerns about the Board's ability to provide an adequate program.

The Superintendent of Schools describes the special education program at S.S. as being a resource room providing special assistance to pupils with difficulties in language and mathematics. Some pupils attending the resource room are returnees from Cecil Facer, a school for youth in trouble with the law.

The Superintendent of Schools reports that members of the November 7 IPRC meeting were the same as the August meeting except that the Vice-Principal of S.S. replaced the Grade 8 teacher. The appellants were in attendance. The only member who presented a dissenting opinion was the Co-ordinator of Special Education. She (the Co-ordinator) stated that, in her opinion, the Board could not provide an adequate program for the student. All other members supported the decision of the August IPRC meeting which was subsequently upheld by the Special Education Appeal Board.

In cross examination the student's father states that he did not attend the IPRC meeting of August 8, as he was at the Gow School with his child at that time. He also states that his child was accepted for enrolment at Gow on August 14. He admits that the Trillium School alternative was not followed up even though it had been identified as a possibility for his child.

The Co-ordinator of Special Education, under cross examination, confirms that at the August IPRC meeting she did not voice any concerns about the placement proposed for the student, stating that these concerns were expressed at the November meeting.

Under cross examination the Grade 8 teacher reports that, in consultation with the student's mother at the end of the Grade 8 year, she did not want her child to repeat his year. With regard to the recommended placement for the student by the IPRC, he states that the resource room at the secondary school is suitable for program individualization, and confirms his support for the four recommendations of the August meeting:

1. that the student be identified as an exceptional student;
2. that resource room services and program modification in the student's courses be implemented with attention to written skills, sequencing and organization;
3. that the special education department be involved with the student -- psychological services and consideration for the Learning Enrichment Service, with the parents' permission;
4. that a teacher advocate monitor, support and counsel the student on a regular basis.

In his summary, Mr. Bragagnolo contends that the system had not failed the pupil. The Co-ordinator of Special Education was aware of the student's difficulties and previous individual assistance by the Grade 8 teacher. As a result of the assessment completed at the Mandelcorn Clinic, the issue of learning disability was introduced. The ensuing recommendations, according to Mr. Bragagnolo, do not differ from those presented by the IPRC, except numbers 4 and 5 of the Mandelcorn report. He claims that, subsequent to the student's identification as a learning disabled pupil, the Board was never given a chance to prove the adequacy of the program planned for the student. He does not challenge the efficacy of the Gow placement by the parents, but states that it is not the responsibility of the Board to send learning disabled pupils to the "best school". He argues that the Tribunal should conclude that the IPRC and the Special Education Appeal Board were correct in reaching the decision that the Board was able to provide an adequate program and was never given the chance to do so.

Basis for Decision

The Tribunal finds that the dispute between the parties rests with the placement recommended by the IPRC. The Board is convinced that it can provide an adequate program for the student. On the other hand, the parents argue that the program outlined for their child is not appropriate nor can the Board provide an adequate program. They also claim that there is no adequate program available in Ontario.

In order to reach its decision, the Tribunal notes the following:

1. There is no dispute between the parties as to the identification of the student as an exceptional pupil with a learning disability. Dr. Mandelcorn's report and the material placed in evidence regarding the Gow School confirm this finding. It is acknowledged, however, that this identification was made by the IPRC only after the student had received the psychoeducational assessment by Dr. Mandelcorn in May 1984.
2. We note the learning difficulties encountered by the student, particularly after [the student's] promotion from elementary to secondary school. The student did not complete assignments, was truant on an inordinately large number of occasions, and failed every subject in Grade 11. In our opinion the parents, teachers, principals and members of the special education staff were remiss in not realizing, perhaps as early as Grade 8, that the student was showing signs of at least some form of learning disability, and yet everyone, with the possible exception of the Co-ordinator of Special Education, simply concluded that the student was "lazy and should

work harder”.

3. We are not aware of any provision in the *Act* or regulations made under the *Act* that empowers a school board to purchase education for a pupil under its jurisdiction from a private school, either within or without the Province. There is a provision, after a pupil has been determined by a board to be “hard to serve” under subsection 34(9) of the *Act*, for a board to “assist the parent or guardian to locate a placement suited to the needs of the pupil and reimburse the parent or guardian for any expenses incurred by the parent or guardian in locating such placement”. Only in Mr. Alexander’s closing statement did he mention the words “hard to serve”. No evidence was presented to us concerning “hard to serve” with regard to the student, nor did the parents seek to follow the appropriate provision under *Section 34* of the *Act* to find a determination of “hard to serve”.

In this same connection reference was made to a chart of special education programs often referred to as the “Cascade Model”. Mr. Alexander claims that the Gow School “is one of the options open to school boards”. In our examination of the Cascade Model as used by a number of Ontario school boards (see Appendix A), and in our examination of the *Act* and the regulations, we do not see any power for a school board to purchase education from private schools, and we must, therefore, reject the suggestion that the Board has the authority to reimburse the parents for their expenses related to the student’s enrolment in the Gow School.

4. We note with concern the manner in which the Board’s Identification, Placement and Review Committees are established and conducted. In evidence presented it appears that some persons who attended the meetings of August 8 and November 7 were not aware that they were actual members of the committee as provided for in Section 3 of Ontario Regulation 554/81: Special Education Identification Placement and Review Committees and Appeals. The records of these meetings are headed “Conference Notes” and the membership of the committee is not shown, except for the chairman. The Educational Assessment (pages 86 and 87 of Exhibit 1) is far too sketchy for a matter of such importance, and could hardly be worthy of its title.
5. Although the handling of the student’s case by the Board personnel may leave something to be desired, we believe that the Board and its officials made an honest attempt, through the recommendations of the IPRC, to provide a suitable placement for the student as soon as his exceptionality had been determined. The IPRC set up a program much in line with the first three recommendations of the Mandelcorn report, and the Board had qualified teachers and resource and administrative personnel to provide an appropriate program. The multi-year plan of the Board provided for programs for the learning disabled at the secondary level.

The fact that the first IPRC meeting was delayed from June until August to accommodate both the parents and the Board staff, does not appear to be overly significant, especially since it appears to us that the parents may have already made their decision to withdraw their child from S.S. and place their child in a private school.

6. We note with some concern that no serious consideration was given by either the parents or

the Board personnel to the possible enrolment of the student in the Trillium School, a residential demonstration school for learning disabled pupils established by the Minister of Education.

Decision

1. The Tribunal dismisses the appeal of the appellants with regard to the placement recommended by the IPRC at its August 8, 1984 meeting and reiterated at its subsequent meeting on November 7, 1984.
2. The Tribunal rejects the request of the appellants that they be reimbursed for their expenses incurred in sending the student to a private school. There is no order as to costs.

Tom H. Houghton, Chairman

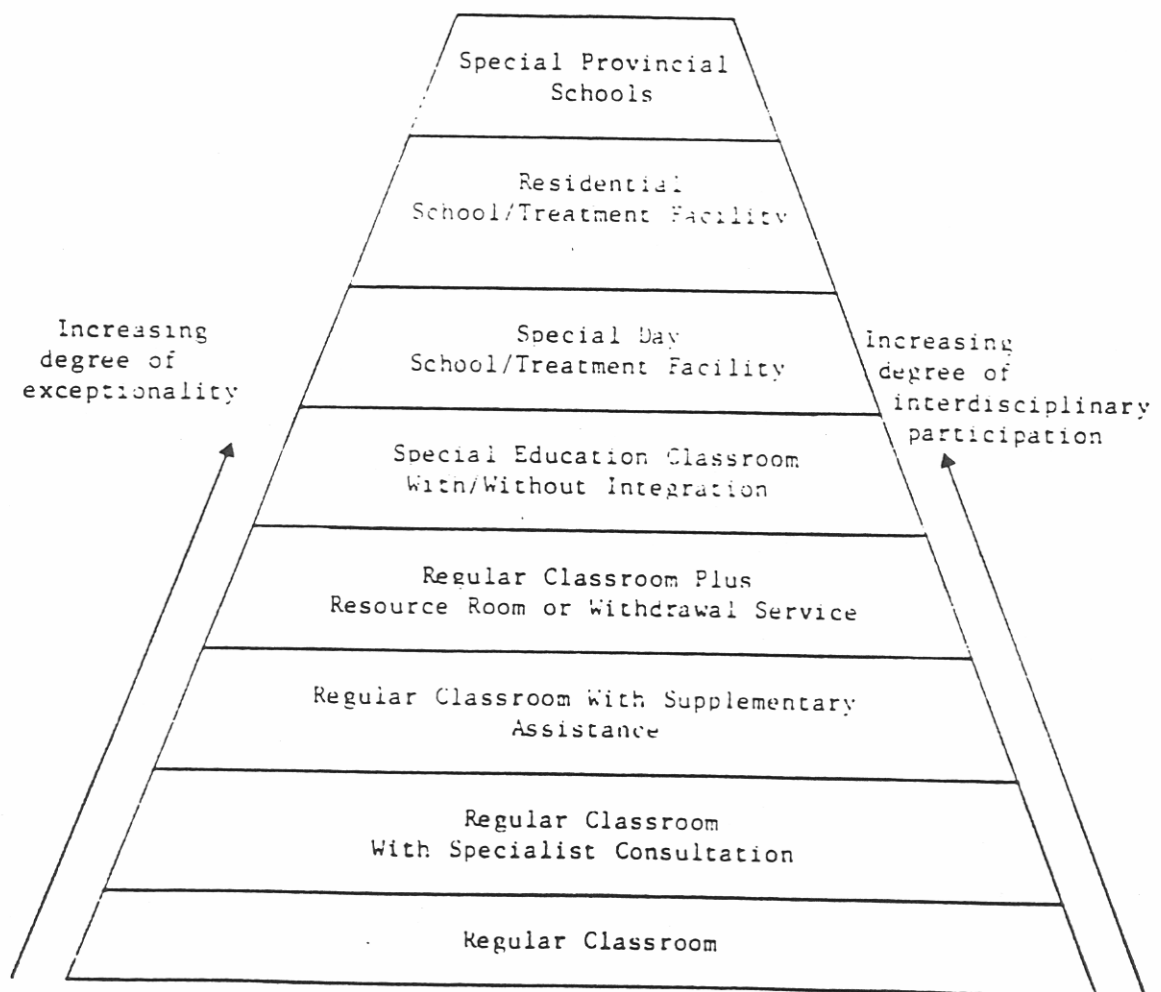
Denis R. Levesque, Member

Donald C. Thrush, Member

Date: September 13, 1985

SPECIAL EDUCATION PROGRAMS

Education for exceptional pupils requires a wide range of programs and services. It is not expected that every school board will be able to provide within its jurisdiction the full spectrum of educational opportunities indicated in the following model:



Source: Ontario Council of Administrators of Special Education, 1978