



## ONTARIO SPECIAL EDUCATION (ENGLISH) TRIBUNAL File #56

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IN THE MATTER OF THE *Education Act*, R.S.O. 1990, c. E.2, as amended, ss. 57  
AND IN THE MATTER OF *Ontario Regulations 181/98*,  
AND IN THE MATTER OF the minor child, J. T., born 1990.

B E T W E E N

J. T., Appellant

- and -

Peterborough Victoria Northumberland and Clarington  
Catholic District School Board, Respondent

### Tribunal Members

Derryn Gill	Chair
Uma Madan	Member
Noel Williams	Member

### Appearances

J. T.	Parent
Georgina Rayner	Advocate
Mr. Eric Roher	School Board
Dr. Linda Rowden	Psychologist
Ms. N	Principal at St Francis of Assisi Catholic Elementary School
Ms. B	Special Education Consultant
Mr. F	Principal at Holy Trinity Catholic Secondary School
Stephen Kelly	Secretary

The hearing on the matter of the merits of the appeal was held on June 8 and June 9, 2006, in Oshawa, Ontario.

## **Introduction**

The Appellant appealed to the Ontario Special Education (English) Tribunal regarding the special education placement of her child, an exceptional pupil. The decision of the October 19, 2004, Identification, Placement and Review Committee (IPRC) is the subject of the Appeal.

The student is now fifteen years old and has been diagnosed with autism with overlying verbal apraxia. The student has a history of severe sensory sensitivities, tics, and obsessive-compulsive behaviours. At the time of the hearing, the student was enrolled at the secondary school in the autism program but was not attending school because the student had been suspended.

The issues before the Tribunal were:

- whether the Tribunal has jurisdiction to hear the case, and
- the appropriate placement of the student.

The hearing lasted two days. Five witnesses were called to give testimony: two for the Appellant and three for the Respondent.

To accommodate witnesses and to expedite the hearing, witnesses were heard out of order.

## **History**

In September 1996, the student began schooling at an elementary school in the school board.

On September 15, 1997, the student was identified as Exceptional – Communications and was placed in a regular classroom with modified program and resource assistance.

In 2002, the student participated in a modified Grade 5 program in an elementary school. The student spent part of the day in a regular Grade 5 and the rest of the day in a segregated room, where the student was monitored by a full-time educational assistant.

On December 3, 2002, an IPRC identified the student's exceptionality as Communication – Autism and the student's placement as regular class with resource assistance. The Appellant appealed that decision.

In December 2002, the student was suspended and then partially expelled from school and spent the next eighteen months at home with some home instruction.

On May 7, 2004, the Appellant agreed to a placement "in a special education autism class with partial integration". The student was then transitioned into the autism program at the elementary school.

On October 19, 2004, a new IPRC was held. The IPRC decision stated that the student's identification was Communications – Autism and the student's placement was a special education class with partial integration. The Appellant appealed that placement. In November 2004, the student was transitioned into the autism program at the secondary school.

On November 30, 2005, the Special Education Appeal Board (SEAB) met and recommended the implementation of the placement determined at the October 19, 2004, IPRC. The board met and accepted the SEAB decision and recommendations.

On December 3, 2005, the Ontario Special Education (English) Tribunal ruled that its jurisdiction to hear the Appeal of the December 3, 2002, IPRC decision ended when the parties entered into a private agreement to place the student in a special education class.

The student remained in the secondary school autism program until March 2006, when he was suspended. The student has remained out of school since that time.

The proceedings concern the appeal of the October 19, 2004, IPRC decision.

### **Preliminary Issues**

The Respondent presented a motion asking the Tribunal to decline to hear the appeal on the grounds that it does not have jurisdiction to hear the appeal.

The Appellant requested an adjournment on the grounds that she had only just received the Respondent's jurisdiction motion and needed time to hire legal counsel in order to oppose the motion.

The Tribunal denied the Appellant's request for an adjournment and proceeded to hear the jurisdiction issues concurrently with the appeal of placement.

### **Relevant Statutory Provisions**

The Tribunal's authority is set out in section 57 of the *Education Act, R.S.O. 1990, c. E.2*, and the regulations made there under. The Tribunal's procedures are governed by both the *Statutory Powers Procedure Act* and by the general rules of "natural justice" and "procedural fairness" applicable to administrative tribunals.

- ***Statutory Powers Procedure Act, R.S.O. 1990, c. S.22***
- ***Education Act, R.S.O. 1990, c. E.2***

A number of regulations made under the *Education Act* concerning special education in whole or in part have been used in the arguments presented by the parties.

Subsection 57 (3): Right of appeal: Where a parent or guardian of a pupil has exhausted all rights of appeal under the regulations in respect of the identification or placement of the pupil as an exceptional pupil and is dissatisfied with the decision in respect of the identification or placement, the parent or guardian may appeal to a Special Education Tribunal for a hearing in respect of the identification or placement.

Subsection 8 (3): Identification programs and special education programs and services: The Minister shall ensure that all exceptional children in Ontario have available to them, in accordance with this Act and the regulations, appropriate special education programs and special education services without payment of fees by parents or guardians resident in Ontario, and shall provide for the parents or guardians to appeal the appropriateness of the special education placement, and for these purposes the Minister shall,

(a) require school boards to implement procedures for early and ongoing identification of the learning abilities and needs of pupils, and shall prescribe standards in accordance with which such procedures be implemented

Subsection 305 (1): Access to school premises: The Minister may make regulations governing access to school premises, specifying classes of persons who are permitted to be on school premises and specifying the days and times at which different classes of persons are prohibited from being on school premises.

- **Regulation 181/98**

*Regulation 181/98: Identification and Placement of Exceptional Pupils* governs the identification and placement of exceptional pupils, *IPRC* reviews, appeal procedures, and the role of parents/guardians in these proceedings. This regulation provides a mechanism for parents to appeal the identification and placement decisions of an *IPRC* to an appeal board and sets out the time lines that must be met for such an appeal.

- **Regulation 474/00**

*Regulation 474/00 Access to School Premises* subsection 3 (1): A person is not permitted to remain on school premises if his or her presence is detrimental to the safety or well-being of a person on the premises, in the judgment of the principal, a vice-principal or another person authorized by the board to make such a determination.

- **Regulation 37/01**

*Regulation 37/01: Expulsion of a Pupil* section 2: When expulsion is not mandatory: For the purposes of subsection 309 (3) of the Act, the expulsion of a pupil is not mandatory if,

- (a) the pupil does not have the ability to control his or her behaviour;
- (b) the pupil does not have the ability to understand the foreseeable consequences of his or her behaviour; or
- (c) the pupil's continuing presence in the school does not create an unacceptable risk to the safety of any person.

- **Regulation 106/01**

*Regulation 106/01: Suspension of a Pupil* section 1: When suspension is not mandatory: For the purposes of subsection 306 (5) of the Act, the suspension of a pupil is not mandatory if,

- (a) the pupil does not have the ability to control his or her behaviour;
- (b) the pupil does not have the ability to understand the foreseeable consequences of his or her behaviour; or
- (c) the pupil's continuing presence in the school does not create an unacceptable risk to the safety of any person.

- **Special Education: A Guide for Educators (2001)**

Part D, page 11: *A special education class with partial integration*

The student is placed by the IPRC in a special education class where the student-teacher ratio conforms to *Regulation 298, section 31*, for at least 50 per cent of the school day, but is integrated with a regular class for at least one instructional period daily.

- **Special Education Tribunal Cases Cited**

*B. v. Sudbury Catholic District School Board, 1999*

*C. v. Dufferin-Peel Catholic District School Board, 2003*

## **Appellant's Position**

### **a. Due Process**

The Appellant stated that her child's education has been compromised because the board did not follow the Ministry of Education guidelines for conducting an IPRC meeting and a Special Education Appeal Board (SEAB) meeting. Particularly:

- The IPRC that determined the student's placement as special education classroom with partial integration took place after the student was already in the autism class.
- The IPRC that decided to move the student from the elementary school to the secondary school site was composed solely of staff from the sending school.
- The IPRC did not have a member or consult an expert who was qualified to read Dr. Rowden's assessments.
- The school had never done any psychological assessments on which to base an Individual Education Plan (IEP).
- The SEAB meeting did not take place until thirteen months after the IPRC was appealed.

The Appellant stated that her child's education has been compromised. The student missed eighteen months of classes because the board repeatedly expelled\* the student from school. The Appellant was never granted the opportunity to appeal the expulsions before the school board. The Appellant claimed that the student was expelled for behaviours that are characteristic of autism and that the board should not expel a

student for behaviours that the student does not have the ability to control. The Appellant claimed that the behaviours were exacerbated by staff members who were not properly trained to de-escalate stress-related behaviours.

b. Placement

The Appellant requested that the Ontario Special Education (English) Tribunal place her child “in a well-established, successful program that will meet all the student’s needs even if it means placement in another location with a different school board if necessary”. The Appellant would like to have the student placed where the student would receive “a personalized individual program that will address the student’s educational needs, speech and language needs, and writing skills; address technology and adaptive equipment training; address communication needs, develop social skills, teach integration skill, and so on.”

The advocate for the Appellant contended that the student had been placed in the autism program before the IPRC had made the decision to change the student’s placement from regular classroom with resource assistance to special education class with partial integration. The Appellant had never signed an IPRC Statement of Decision agreeing to the autism program, and she felt that the autism program was not meeting the student’s needs. The student had been suspended from school on March 28, 2006, because the school was not able to deal with the student’s autism-related behaviours.

The advocate stated that the student needs to be in a class where the staff is well trained and experienced in dealing with students with autism, obsessive-compulsive disorders, and Tourette’s syndrome. The advocate contended that the autism program was too new to be suitable for the student, that the staff was not experienced in de-escalating stress-based behaviours, and that the classroom teacher was not qualified to teach at the high school level.

The advocate said that the student needs to receive direct service from professionals regulated by the *Regulated Health Professions Act*. She stated that the consultation model in place in the board is a violation of the student’s rights and needs and has prevented the student from developing appropriate communication skills.

The Appellant claimed that the autism placement does not meet the definition of partial integration, as the student interacts with the student’s peers only in the school hallways or through one-on-one reverse integration programs. The advocate asked that the student be given the rights as a person to full integration. She asked that the student’s placement be in a school where the facilities, programs, policies, and procedures foster the student’s participation in school activities.

Re “expelled” p. 5 \*

Both parties used the terms “suspended”, “expelled”, and “excluded” to describe the instances when the student was asked to leave school. The Tribunal did not receive documentation on the December 2002 suspension, but will rely on the chronology of events that the Superintendent of Schools prepared for the SEAB. This states, the student “was suspended for 10 days, then a limited expulsion was imposed.” On March 6, 2006, the student was suspended in accordance with section 306/307 of the *Education Act*, Board policy, and *Administrative Regulation 801*. On March 28, 2006, the

student was suspended in accordance with the *Education Act*, section 305, and *Regulation 474/00*, section 3, subsection 1.

### **Respondent's Position**

#### a. Due Process

The counsel for the board contended that the IPRCs were properly constituted. In particular:

- The members of the IPRC and SEAB committees were chosen as per Ministry Regulations and board policy.
- No outside expert is required on an IPRC and no expert was needed as staff could interpret the assessments.
- The IPRC meetings were delayed to suit the Appellant who wanted more time to prepare.
- The Appellant failed to appeal the decision of the February 15, 2005, IPRC. Therefore, the decision on placement has been made and agreed to.

The Respondent says that the student's "suspension was never intended to be punitive, nor was it levied within the provisions of the *Safe Schools Act*" and that no violent incident reports were filed. Rather, the principal invoked the *Education Act*, section 105, and *Regulation 474* and excluded the student from programming until "some very solid programming could go into place to address this issue and the Appellant complied with the school's list of requests for assessments".

#### b. Placement

The board's counsel stated that the Tribunal has no decision to make: the Appellant has effectively agreed to placing the student in the autism program because she has not appealed the decision of the February 15, 2005 IPRC.

The board's counsel outlined the student's education by saying that the student started school in 1996 in a regular classroom. The student was identified as Exceptional – Communication in 1997 and placed in a regular classroom with resource support. The student was eligible for an Intensive Support Amount (ISA) claim and qualified for a Special Incidence Portion (SIP) under the Ministry of Education's special education funding model. The student was also eligible for an ISA-1 claim and has been provided with a laptop and a voice output assistance device. In December 2002, the student began home instruction for eighteen months. In May 2004, the student started in the autism placement at the elementary school and in October 2004, the student transitioned to the autism placement at the secondary school.

The board's counsel stated that the autism program is a specialized environment where the communications program, the socialization program, and the behavioural program are tailored to the needs of children with autism. At the autism program, the student was provided with a special education teacher, a full-time education assistant, and two autism spectrum workers. The autism program provided occupational therapy and speech and language pathology services. Consultants from Bloorview MacMillan Children's Centre, the Geneva Centre for Autism, and Kinark assisted with the programming at the autism program. Staff from the elementary school autism program

transferred with the student to the secondary school autism program to ease the student's transition. Integration and reverse integration are arranged for the students as part of the program at the autism placement.

The board's counsel stated that the student is doing extremely well in the autism program. He quoted from the transcript of the October 19, 2004, IPRC where the Appellant said, the student "was making remarkable progress since the student returned to school and in fact is talking again for the first time in years." The board's counsel quoted Ms. N., the principal at the elementary school, as saying, "The staff are in agreement that the student has made progress since the student's placement in the program on May the [seventeenth] in [the student's] speaking, in the student's ability to move through the school with an education assistant and with interactive activities in the autism classroom."

The board's counsel contended that the Tribunal has only the authority to rule on the placement for the student, not the programming and services within that placement. He stated that the board has made the appropriate choice by placing the student in a special education class with partial integration. That placement is the autism program at the secondary school.

### **Witnesses**

The appellant called the following witnesses:

1. The Appellant, parent
2. Dr. Linda Rowden, psychologist

The Respondent called the following witnesses:

1. Ms. N., principal at the elementary school
2. Ms. B., special education consultant
3. Mr. F., principal at the secondary school

### **Evidence**

#### **The Appellant's Evidence**

The Appellant described the student's need for specific types of programming and services and the student's need for full integration with peers. In the past four years, the Appellant has appealed placements in both regular classroom and special education classroom settings, as these settings did not provide the type and intensity of programming that the student needs. The Appellant stated that because the student has been excluded from school and from the regular classroom for such a long time, the student is a special case and needs intensive programming in a successful existing communication program for autism. She stated that the board should purchase services for the student in a program in Toronto or York Region. Alternatively, the Appellant asked that the student be placed in the "proposed" provincial school for students with autism.

The Tribunal heard from the Appellant that the student likes school and likes to be with other children. The Appellant provided the school with a letter from Dr. Lai Fatt that stated the student "wanted to go to school". The Appellant said that the student needs to be with peers to experience age-appropriate language and behaviour. She would like the

student to be included in school activities and outings, and she said that the student can benefit from any integration experience if the student is properly supported.

The Appellant stated her concern that:

1. The student's academic, communication, behavioural, sensory, and social needs are not being met in the autism program.
2. The student's ability to speak has diminished since the student left an elementary school, where the student received one-to-one speech and language therapy.
3. The student's tics and obsessive-compulsive behaviours have worsened in the autism program, where the staff are not trained or experienced enough to calm the student.
4. The student is being improperly physically restrained.
5. The board has never done appropriate psychological testing on the student. The board has never had Dr. Rowden's reports reviewed by a board psychologist. The board has never developed an IEP based on a proper understanding of the student's strengths and needs.
6. Not enough time was provided at IPRC or Special Education Appeal Board (SEAB) meetings for the Appellant to properly discuss the student's statement of needs.
7. The student was suspended from school by a notice citing section 306/307 of the *Education Act* when, under the provisions of *Regulation 37/01* or *Regulation 106/01*, the student need not have been expelled or suspended for autism-related behaviours.
8. The student has missed two years of schooling while the student was suspended and partially expelled and needs extra time and extra one-to-one teaching to catch up.
9. The board rushed the student into a high school setting in an effort to get the student through [the student's] high school eligibility years as quickly as possible. The Appellant felt that the student was making gains in the elementary school autism program.

The Appellant contended that the issues before the Tribunal have not previously been settled because she never signed an IPRC statement of decision to place the student in the autism program. She did not sign the February 15, 2005, IPRC statement of decision because the issues had already been appealed to the Tribunal and she felt that starting another appeal before the first one was heard was a waste of time and money. She stated that she felt that the board's initiation of the February 15, 2005, IPRC was another of the board's attempts to delay justice and deny programming to the student. In a letter to the Tribunal referring to the February 15, 2005, IPRC, the Appellant stated, "I have not signed the IPRC decision as I am gravely concerned with the student's present lack of measurable education and programs in the current autism program."

The Appellant stated that despite the contention that the autism program offers the support necessary for students with autism, the program does not meet the student's needs. A review of the student's work that was sent home from school when the student was suspended shows that there is "still no focus on communication, there is nothing specific with regards to the escalation of anxiety and as far as social skills, and as far as the student's education there was minimum, minimum education. I don't think this placement is meeting the student's needs."

The Appellant introduced, as her expert witness, Dr. Lynda Rowden, who is a registered psychologist with seventeen years of experience in assessing children with autism spectrum disorders. Dr. Rowden stated that the student has been diagnosed as having an autistic disorder with an overlying verbal apraxia. In addition, the student has been diagnosed as having a history of severe sensory sensitivities, tics, and obsessive-compulsive behaviours. The student has qualitative impairments in social relatedness, communication, and spoken language. On standardized testing, the student tests significantly below grade level. She also stated that the student is compliant, hard working, and quite cooperative when the student is “in a situation with clear structure, understanding of the task demands, and accommodations for [the student’s] needs”.

Dr. Rowden stated that the student needs ongoing sensory-integration support, a sensory diet, and an individual program supervised by an occupational therapist to meet the student’s sensory needs. Dr. Rowden stated that the student needs to be supervised by staff members who can read the student’s stress levels and are trained in adaptive strategies to help the student calm [the student]; staff who understand the student’s core morbidity and understand the additional factors of Tourette’s syndrome and the obsessive-compulsive disorder. Dr. Rowden said that the student had “huge” programming needs in the areas of receptive communication and expressive communication. Dr. Rowden stated that the student needs daily and intensive speech and language intervention. The student needs a program that focuses on development of academic potential. She said that the student has a very complex pattern of learning strengths and weaknesses, and the student needs very clear and organized visual approach to teaching. The student needs adaptive technology to deal with [the student’s] communication and motor-planning issues. The student needs a very intensive program that works on development of receptive language, on understanding, and on expressive communication skills.

Dr. Rowden stated that given the student’s “multiple co-occurring kinds of difficulties, the student really needed to be placed in a more contained versus integrative academic setting. The student needs an intensive individualized program at multiple levels in an environment where staff can control the sensory variables, a program that is best delivered in a contained environment where there are people with educational training skills and experience in developing and implementing individualized programs with intensive individualized supports. Particularly, the student needs a classroom and program specifically designed for children with autism spectrum disorder. The student needs a life-skills program to help the student develop, as much as possible, an “independent functioning kind of lifestyle”. The student needs very structured transitions.

#### Respondent’s Evidence

The Respondent recommended placement in a special education class with partial integration; specifically the autism program at the secondary school

Ms. N., principal of the elementary school, gave testimony on the development of the autism program and the training of the autism program staff. She described the case conference of September 16, 2004, and the IPRC meeting of September 17, 2004. She stated that the makeup of the IPRC was approved by the board. Ms. N. said that the Appellant had the opportunity to present the student’s statement of needs and that Dr. Rowden’s report had been “extremely helpful” in preparing the student’s Individual Education Plan. The IPRC decision was special education classroom with partial

integration. The intention of the committee was to transition the student to the autism program at the secondary school because the student was too old and too large for the elementary school autism program. The Appellant requested another IPRC and expressed her concern that the original IPRC had no members from the secondary school.

Ms. N. stated that Mr. F., the principal of the secondary school, attended the second IPRC meeting. The committee answered the Appellant's questions and provided information regarding the secondary school autism program and the proposed transition plan. Ms. N. stated that the student's mother and advocate said that the student had made "remarkable" progress in the elementary school autism program.

In the minutes of the SEAB meeting, Ms. N. describes the student as "a very happy and gentle student" and "a fine young [student]". This is corroborated in the June 17, 2004, year-end report written by the student's home-schooling teacher, who wrote that the student "has proven to be a gentle [student] who responds well to social praise".

Ms. B., a special education consultant with the board, described how the autism program was developed after extensive consultation with similar school programs across the province and in Quebec, as well as consultation with the Geneva Centre for Autism. The program was developed specifically to provide more specialized programming around autism for students who had difficulty in an integrated setting. The secondary school program started in 2004/05 and is a continuation of the programming at the elementary school. The program houses six students taught by a special education teacher, and has two autism spectrum disorder workers and an education assistant for any student with a SIP grant. The program covers the triad of impairments related to autism: communication, social, and behaviour, and, in addition, covers anxiety issues. The academic focus is primarily literacy and numeracy but is tailored to the needs of each student. The speech and language pathologist works with each student individually and provides programming for the teachers and parents to follow.

Ms. B. said that she met the student when the student was at an elementary school. The student was not able to profit from the learning in a regular classroom because of the student's sensitivities to noise and disruption. Ms. B. said that she believed that the autism program was the only placement in the board that is suitable for the student. She said that the Appellant had said that she wanted the student "to stay at home and that a residential program was not something that she would consider".

Mr. F., the principal of the secondary school, described the planning that went into developing the autism program at the secondary school to meet the needs of students with autism. He said that he attended the October 19, 2004, IPRC to describe the secondary school autism program to the Appellant. He described how the school is set up for the autism program students, particularly the Snoezelon room, the alternative lunchroom, the small weight room, and the coloured direction lines on the walls. He described the involvement of co-op students in reverse integration in the autism program and the inclusion of autism program students in school activities. Mr. F. said that the student had been to the gym, mass, and assemblies with the autism class, but had not had individual integration opportunities because the teachers were not certain of the student's ability to tolerate the stimulation. Mr. F. spoke about the need to hire a chaperone to travel with the student on the bus for safety reasons and about the behaviour incidents that precipitated the student's suspension. He outlined the

communication with the Appellant about the process necessary for returning the student to school. Referring to the autism program, he stated that there is “no more effective program in our board to address those (autism) issues and also promote learning for the student”.

## **Reasons**

### **Placement**

The issue in question is: What is the best placement for the student in order to meet the student’s many complicated needs? The Tribunal considered the student’s previous placement of regular classroom with resource support and the student’s disputed placement of special education classroom with partial integration and has determined that the student should be placed in a special education class with partial integration.

The Appellant used the term “complete integration” when describing the student’s rights and enumerated the teaching style, services, therapies, and programming that would best meet the student’s needs. She stated that the student needs to be in a well-established classroom for students with autism and suggested that the board should be obliged to purchase services for the student from a neighbouring school board. The Appellant’s expert witness stated that the student needs a special education class with partial integration and appropriate programming. Dr. Rowden stated that the student’s many sensitivities to stimulation and the necessary intensity of the student’s sensory and communications programming could not be accommodated in a regular classroom. All of the Respondent’s witnesses agreed with a placement designation of special education with partial integration and recommended the autism program at the secondary school as the most beneficial placement for the student in the board. The Tribunal accepts the testimony of Dr. Rowden who stated that the student’s needs can best be met in a special education classroom with intensive programming specifically designed for students with autism spectrum disorder.

The Tribunal heard that the Appellant had been reluctant to have the student move from the elementary school setting where she felt that the student was making progress. She also wanted to be sure that the student remained eligible for the maximum number of years of secondary school programming. Ms. N. said that the student was too old for the primary/junior program, where the student had no age-appropriate peers with whom to socialize. Also, the student is too large both for the primary classroom furniture and for the safety of the other smaller students. The Tribunal accepts the testimony of Ms. N. To reap the benefits of integration and social communication, the student needs to be with age-appropriate peers and therefore the student belongs in a secondary school.

The Tribunal acknowledges the Appellant’s statement that she wanted the student to attend a provincial school. At present, there is no provincial school for students with autism spectrum disorder and, even if there were, the Tribunal does not have the authority to place students in provincial schools.

For safety reasons, the student needs a chaperone on the bus and the student is often agitated at the end of the ride. Therefore, extending the student’s bus ride would not be beneficial for the student. If the Appellant wants the student to live at home, the Tribunal believes that the student should be educated as close to home as possible.

The student has missed almost two years of class time because of suspensions for behaviours that are characteristic of the student's diagnosis. The Appellant believes that the suspensions could have been avoided if the board had put in place an appropriate behaviour and safety plan for the student, something that she has been asking for four years. Mr. F. stated that the autism program is designed to deal with the behaviour needs of students with autism. He stated that as the principal of the school, he is responsible for the safety of the students and the staff and for maintaining an optimal learning environment for all students. He stated that the school would use the best professional resources to problem solve for the student. The Respondent presented evidence to show that the student had been successful in the autism program for more than a year. The Respondent offered as evidence the transcript of the October 19, 2004, IPRC, where the Appellant said that she was happy with the progress that the student was making. Two of the student's teachers described the student as a "gentle student" and "responsive to social praise". The student's subsequent difficulties in class may have been due to stresses that originated outside the school setting, which may have been alleviated by subsequent assessment and intervention. The Tribunal agrees with the Respondent that the autism program is the best placement that the board has to offer the student. The Tribunal believes that the board has an obligation to continue to work with the Appellant to develop a current behaviour and safety plan for the student so that the student can benefit from the learning environment. However, if the student's behaviours cannot be accommodated within the autism program, the board should look at alternatives other than sending the student home.

During the student's suspensions, the board received SIP grants that were intended to finance special programming for the student. Dr. Rowden's report stated, that "The student needs daily and intensive speech and language intervention". The Respondent offered no evidence suggesting that the student received any speech therapy while on suspension or during home instruction. The Tribunal believes that the board has an obligation to intensify the student's communication programming to the extent that the student can tolerate, in an effort to make up for that lost time.

Ms. B., Ms. N., and Mr. F., all stated that the autism program is designed to assist with the behavioural, communication, social, sensory, and academic needs of students with autism spectrum disorders. The programs and services that they enumerated are the same as those that the Appellant and Dr. Rowden said were necessary to meet the student's needs. At a number of meetings, the Appellant has had the opportunity to discuss the student's needs and to have her questions about the autism program answered. The Tribunal believes that the school has met its obligation to make the student's parents aware of the programs and services that the student would receive with the autism program.

The Tribunal is convinced that a special education class with partial integration and appropriate individualized programming and services is the optimum placement for the student. The Tribunal accepts the board's assertion that the autism program at the secondary school is the best placement that the board has to offer. However, the student's experience in the autism program does not meet the Ministry definition of partial integration as written in *Special Education: A Guide for Educators* (2001). The Tribunal would like to restate the SEAB's recommendation that the "board determine a baseline of the student's integration at this time and work toward increased integration".

## Jurisdiction

The respondent's motion claimed that there are three reasons why the Tribunal lacks jurisdiction to hear this appeal:

1. The Appellant agreed to the special education class with partial integration by not appealing the February 15, 2005, IPRC decision. Therefore, the issue is moot.
2. The issues in the appeal have been resolved.
3. The Tribunal can only rule on placement, not on programs and services.

## Issue 1

The Respondent claimed that the matter is moot because a subsequent IPRC meeting was held on February 15, 2005. That IPRC rendered a decision on identification and placement that was identical to the October 9, 2004, decision. The Respondent claimed that the Appellant did not appeal that decision within the Ministry of Education time lines and therefore has agreed to the placement.

The Appellant claimed that she did not sign the February 15, 2005, IPRC Notification of Decision. She asked for, in writing, and was granted, more time to consider the decision. In April 2005, she informed the Tribunal that she had not signed the February IPRC because she was "gravely concerned" about the student's placement. She claimed that she was told by her counsel that she had no need to sign the IPRC Notification of Decision, because the previous IPRC with the same decision was under appeal. The Respondent made no attempt to follow up on obtaining that signature until after the Appellant filed her Appeal many months later.

The board appears to have constituted its Identification, Placement and Review Committees correctly. However, the board failed to convene a SEAB for the December 2002 IPRC appeal and waited a year past the legislated time line before convening the SEAB for the October 2004 IPRC. These failures and delays caused undue anxiety for the parents and denied the student the student's rights as a student.

In light of the fact that the board has on a number of occasions missed or disregarded the time lines in *Regulation 181/98*, the Tribunal does not accept the board's contention that a missed deadline can be seen as agreement, when the Appellant obviously does not agree with the IPRC decision and wants to pursue the Appeal.

## Issue 2

The second reason put forward was that the issues before the Tribunal have already been decided.

The Tribunal does not agree that the Appellant's refusal to sign the February 15, 2005, IPRC Notice of Decision means that she agrees with the decision to place the student in a special education class with partial integration. *Regulation 181/98*, subsection 25 (3), states, "A board that, without the written consent of the parent, implements a change in placement as a result of a decision made by a committee under this Part shall give written notice of the implementation to a parent of the pupil." The Regulation does not assume that failure to sign the IPRC decision is the same as consent to the placement. Therefore, the issues before that Tribunal have yet to be decided.

### Issue 3

The third reason that the Respondent put forward was that the Tribunal has only the legislated authority to determine identification and placement. The Respondent claimed that the Appellant's request for specific programs and services within the placement makes the Appeal beyond the jurisdiction of the Tribunal.

The Appellant stated that her child's identification is Communication – Autism and that the student needs to learn communication techniques in order to socialize with [the student's] peers and to demonstrate the student's learning in the classroom. Therefore, appropriate language and communications programming are essential parts of the student's placement. Similarly, the student needs to be integrated with the student's peers to learn language and appropriate social behaviour. The student's placement must include programming to teach appropriate behaviour and to deal with inappropriate behaviour, and it must include periods of time spent with the student's peers both in an education setting and at extracurricular activities.

The Respondent cited *B. v. Sudbury Catholic District School Board*, 1999 and *C. v. Dufferin-Peel Catholic District School Board*, 2003 as support for the board's position that the Tribunal could not accept jurisdiction over this case. However, in both the cited cases the Appellants asked the Tribunal to order the provision of an Intensive Behavioural Intervention/Applied Behavioural Analysis (IBI/ABA) program for their children. Those Tribunal panels ruled that IBI/ABA is a therapeutic program, not an educational program, and, therefore, outside the Tribunal's jurisdiction. The Appellant did not ask that the student be provided with any therapy services that aren't normally provided in the school system or that aren't normally part of the program for a student identified with a communications exceptionality. Therefore, the cases cited by the Respondent do not apply to this case.

Because of the intertwining of placement and program in the autism program, the Tribunal believes that it is necessary to hear the case on appeal in order to understand the student's needs and the proposed placement. The Tribunal needs to determine if the placement can be tailored to meet the student's needs and strengths.

The student is presently on suspension and a delay in the Tribunal proceedings could possibly increase the length of time that the student is excluded from school. In the student's best interest, it seems necessary to proceed with the hearing on merits concurrently with the jurisdiction issues.

### **Decision**

The Respondent's preliminary motion is denied. Therefore, the Tribunal will consider the information put forward at the hearing and rule on the placement for the student.

The decision for placement has been made in accordance with *Regulation 181/98*, subsection 17 (1), which requires that an IPRC, when making a placement decision, shall, before considering a special education class, consider whether placement in a regular class with appropriate special education services (a) would meet the child's needs and (b) is consistent with parental preferences.

The Tribunal orders the school board to place the student in a special education class with partial integration.

The Tribunal orders the board to transition the student back into the autism program at the secondary school beginning the first day of school in September 2006, or as soon as possible thereafter, and to increase the student's hours of attendance to a full day autism program attendance as quickly as the student is able to manage.

- The Tribunal orders the board to develop for the student an IEP with appropriate measurable communication and academic goals.
- The Tribunal orders the board to work with the Appellant and consultants from the Geneva Centre to develop and implement behaviour strategies that allow the student to learn within the autism program.
- The Tribunal orders the board to increase the amount of time that the student spends one to one with the speech and language pathologist to compensate for the speech therapy that the student has missed while on suspension and home instruction.
- The Tribunal orders the board and the Appellant to cooperatively create a Transition Plan for the student. The Transition Plan should consider possible placements for the student after the student leaves the autism program and outline the skills, both life skills and academic skills, that the student needs to acquire during the autism program years.

The Tribunal orders the board to implement the first three recommendations of the December 3, 2005, Special Education Appeal Board:

1. Both the parents and the school board are to be commended for their efforts to provide the equipment necessary for the student's intellectual development. Given the complexity of the student's needs it will be essential that state-of-the-art equipment continue to be integral to the student's success.
2. The Special Education Appeal Board considers case conferences held before the IPRC to be an important information sharing process. We recommend that case conferences with parental involvement be scheduled well in advance of the IPRC. Such conferences would allow for all parties to process new information, seek clarification, and prepare in advance for the more formal meeting of the IPRC.
3. With regard to integration, we recommend that the board determine a baseline of the student's integration at this time and work toward increased integration. We further recommend that the progress toward integration be monitored and specifically reported on at the traditional reporting times (mid-term and end of each semester).

The Tribunal will remain seized of this matter for the school year 2006–07. In the event that the student is again suspended from the autism program, the Appellant may return to the Tribunal.

The Tribunal hopes that school personnel and the student's parents can work together to transition the student back into the autism program. All parties should cooperate to ensure a stress-free, productive school year for the student.

Derryn Gill, Chair

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Uma Madan, Member

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Noel Williams, Member

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Dated on September 14, 2006