



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

and

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

at a hearing into the matter of

The Identification and Placement of minor child

Between

A and B, Appellants

and

Upper Canada District School Board, Respondent

**Tribunal Members**

Marilyn Thain - Chair  
Paula Barber – Member  
Sharon Carson – Member

**Appearances:**

A - Parent

Mr. Philip O'Brien - On behalf of the Upper Canada District School Board

The hearing was held at the Best Western Parkway Hotel, Cornwall, Ontario on June 20 – 22, 2001.

## **Introduction**

At the opening of the hearing the Chair stated that this Tribunal would be guided by the Education Act R.S.O. 1990, c.E.2, section 57, the regulations made there under, and the Statutory Powers and Procedures Act noting that subsection 57(4) of the Education Act delineates the decisions which the Special Education Tribunal may make. "The Special Education Tribunal shall hear the appeal and may:

a) dismiss the appeal; or b) grant the appeal and make such order as it considers necessary with respect to the identification or placement [of the pupil]."

The Chair also stated: *"What is important is that we, the Tribunal members, hear as much information as we can that is going to enable us to make a just and fair decision."*

(Transcript, page 2) The hearing continued as an open hearing. The appellant brought forth a preliminary issue requesting the opportunity to examine the documents that were summonsed. She was given appropriate time to review these documents to ensure that all the documents she requested were available. The Tribunal hearing then proceeded.

## **Witnesses**

Summaries of testimony are presented with the Appellant's witnesses first, followed by the Respondent's witnesses.

### **For the Appellant**

HA - grandparent  
Mr. B - parent  
Mr. L  
Ms.M  
Mr. G  
Dr. Janice Leroux  
Ms. S  
Dr. Ian Nagy  
Dr. James Sofia  
Mme. L

### **For the Respondent**

Dr. James Sofia\*  
Dr. Geoff Langford  
Mr Glenn MacLeod  
Mr. Colin Vickers

\*Note: Dr. Sofia was a witness for both parties.

## **The Appellant's Position**

A, the appellant, requested a Tribunal hearing of the case pertaining to her child to “*consider the matter of the identification of the minor, her child, as an exceptional student.*” (Transcript, page 6, line 5) She stated, “*these needs have not and are not being met by the regular classroom placement which forms the core of the child's IEP.*” (Transcript, page 5, line 7)

A outlined her case by presenting the following assertions:

*(1) “that the UCDSB has identified fewer gifted students than expected for the size of its student population*

*(2) that the UCDSB has not applied resources to the identification and services to the gifted population*

*(3) that her child was not adequately assessed for the child's learning strengths*

*(4) that the interpretation of the WISC III scores resulted in an underestimation of this student's intellectual gifts*

*(5) the criteria for giftedness used by the UCDSB are not in keeping with the Ministry of Education's definition nor current research*

*(6) that UCDSB has recognized the inaccuracy, and has failed to correct this deficiency*

*(7) that UCDSB has not established a range of placements or services for the child*

*(8) that UCDSB caused deliberate delays in the assessment and appeal processes in contravention of the Education Act*

*(9) that this student has not been offered an educational program to meet the child's needs.”*  
(Transcript, page 6)

The remedies sought by the appellant are:

*(1) “that the child be identified as gifted and a note be placed in the student's Ontario School Record that the student should have been identified on the student's entry into the school system*

*(2) that UCDSB abandon the use of IQ scores as an exclusionary criteria*

*(3) that the student be placed in a gifted secondary school program, either provided by UCDSB or purchased from another board with transportation and other additional costs assumed by UCDSB.”* (Transcript, page 6)

## **The Respondent's Position**

Mr. Philip O'Brien, on behalf of the Upper Canada District School Board, stated, “*there is one*

*issue and one issue alone [and] that is the School Board's decision on the identification of the student.”* (Transcript, page 8, lines 21, 22) In his opening statement, Mr. O'Brien stated, *“the Board met its responsibility and established a criteria of what would be required to meet the definition of giftedness within the Board.”*

(Transcript, page 8, lines 25, 26) He planned to show that the student *“did not meet the criteria that the Board has established.”* (Transcript, page 8, lines 28, 29) Mr. O'Brien described the process for Board approval of the Special Education Plan of the Board, compiled in June 1999. He added, *“This is the issue of the Tribunal. Did the Board establish criteria for the identification of exceptional students, and was the criteria followed?”* (Transcript, page 9, lines 22-25)

### **Summary of Appellant's Witness Testimony**

- HA

HA is the child's grandfather and is a physician with a general practice. HA stated he has observed the behavior and characteristics of over one thousand children and is himself the father of seven. He described the student's behavior as *“exceptional”*. (Transcript, page 14, line 8) He stated the student was an early reader who remembered things beyond his years. He described the student's ability during the World Series in 1992 (at five years old). *“The student knew statistics on various players, batting averages, and mechanics of the game and the averages.”* (Transcript, page 13, lines 24-29) During cross-examination, HA stated that it was the child's *“memory and recall and connection”* that impressed him. (Transcript, page 15, line 13) HA also agreed that memory should be one of the criteria, but was not the sole criteria for giftedness. In re-examination the appellant asked HA to comment on the student's skills beyond memory. HA said, *“He had a vision in [the student's] connections that was quite unique.”* (Transcript, page 16, line 8)

• **Mr. B**

In response to questions asked, Mr. B, the child's father, described when he first suspected the student was of a high intellectual ability. He stated before the student was two the student was able to identify letters and formations in soapsuds. Also, at *"[two] years old the student had already started reading these primers, which [are] normally things that are essentially for Grade 1 student[s]."* (Transcript, page 17, lines 21-23) *"The student would have been able to read for upwards of half an hour which is quite amazing for a kid that's just two years old.."* (Transcript, page 17, line 29, 30)

Mr. B explained the student's ability at age six, to read, comprehend and understand concepts of baseball statistics in terms of future earnings of players. Mr. B compared the student's skills to those of the student's two gifted siblings as being *"advanced in terms of the age at which [the student] started to do this rationalization of data"*. (Transcript, page 19, lines 26,27)

Mr. B described the student's skills as an athlete in basketball, baseball and soccer. He said that the student moved from one position to another with ease and the student is very multi-skilled as an athlete. (Transcript, page 20, lines 20-22) the student has passed one stripe of three on the brown belt in karate. At present, the student is the section leader for French horns in the school band. The student has just completed the second grade examination on the piano. The student has received gold certificates and high mention at the Kinsmen Music Festival and sings in the Church choirs. (Transcript, page 20, 21) The student won this year's public speaking contest for the student's school and placed second in the Cornwall Area Legion Competition. The student has been chosen to be the valedictorian for this year's graduating class. (Transcript, page 21)

The student is a chess player. This year, 2001, *"the student got a gold medal in the Cornwall Area Eastern Ontario Chess Championships"*. (Transcript, page 22, lines 11,12) Mr. B then introduced a series of assessments that had been administered to the student. First, he presented Exhibit 1, which was an assessment requested by the student's parents as they *"suspected that[ their child] was gifted"*. (Transcript, page 24, line 9) This assessment was completed in 1992 by Dr. Daniel Briere to consider early school entry into the Quebec school system. Dr. Daniel Briere, the assessor, reported, *"his [student's] intellectual ability is very*

*superior*". (Transcript, page 151, line 10) Upon moving to Cornwall, Ontario, Mr. B provided this assessment to the School, and he *"started discussions on whether [the student is] an identified student or not"*. (Transcript, page 23, line 2) The school then began providing some enrichment. Mr. B introduced a Psychoeducational Assessment completed in October 1994 which indicated that the student *"was functioning overall at the upper end of the superior range of intellectual ability"*, but *"does not qualify for formal identification as gifted within our Board"*. (Transcript, page 26, lines 6-10) Mr. B indicated that few of the recommendations from that report were carried out.

Mr. B shared the results of the Canadian Cognitive Abilities Test {CCAT}, which were noted on the Group Testing Cumulative Record Card (Exhibit 3). The student's *"verbal score was 128 and [the student's] non-verbal 136"*. (Transcript, page 28, line 1) In response to questions asked by Dr. M. Alexis, Mr. B shared letters written from the parents to the Board, (Exhibit 4) requesting a re-assessment of the student for the purpose of identification as gifted. This request was prompted because the student *"was exhibiting the same traits, the same behavioural traits as [the student's] brother and sister."*

(Transcript, page 29, lines 18,19) Mr. B presented an additional sequence of communications (Exhibits 5,6) between the appellant and the Board, which included a request for an assessment of the student and a formal request for an IPRC (Identification, Placement and Review Committee) on Oct. 29, 1999. Mr. B indicated that from the initial request for reassessment in 1999, there would be *"10 months, 11 months"* delay. (Transcript, page 30) He also indicated that he did not anticipate the delays that they experienced as their other children *"K and J have both been identified as gifted."* (Transcript, page 32, lines 5,6) The student's family wanted to help with the process and stated, *"if we need to have [the student] assessed privately, please let us know by whom so that this can be done"*. (Exhibit 5) Mr. B showed certificates from various enrichment activities that the family had arranged for their children. (Exhibits 7, 8) Mr. B concluded his testimony saying, *"I can't understand why we would not propel those that seek to be propelled to a higher level and have demonstrated that they have the capability of being propelled to the higher levels"*. (Transcript, page 35, lines 18-20)

During cross-examination Mr. O'Brien questioned Mr. B as to his criteria for identifying the student as gifted. Mr. B indicated he assessed his child's strengths on his personal

observations, and comparisons to the child's peers and gifted siblings. Mr. B agreed with Mr. O'Brien that some enrichment activities were taking place at School. Mr. O'Brien's questioned Mr. B about the assessment that had been done by Dr. Briere (Exhibit 1). This resulted in Mr. O'Brien and Mr. B agreeing that the assessment reported the student as *"tres superieur"*. (Transcript, page 40, line 4) During re-examination by Dr. M. Alexis, Mr. B indicated that the activities that the student participates in at School are available to any students who apply.

- **Mr. Gilles Levac**

Mr. Levac is a qualified piano, vocal/choir music teacher with fifteen years experience. He has two degrees in music and conducts musicals at varied levels (primary, elementary, junior) and at professional theaters. The appellant questioned Mr. Levac on the student's musical ability. Mr. Levac stated *"while most children would not question what the teacher is asking them to do, both musically and interpretation wise, [the student] is consistently questioning why things are the way they are in music"*. (Transcript, page 59, lines 27-30) The student *"learns and understands and questions pieces of music in general at a faster level than children or youth [the student's] age"*. (Transcript, page 61, lines 1-3) Mr. O'Brien established, through cross-examination, that Mr. Levac had no background in identifying gifted students in School Boards, and was only speaking of the student's musical ability.

- **Ms. Margraid-Rose McRae**

Ms. McRae stated she was the SEAC (Special Education Advisory Committee) member for the UCDSB from October 1998 to December 2000 representing the Association for Bright Children. She indicated that she resigned from this position as, *"I sat at the SEAC table for Bright Children for [three] years and during that course of time there's not one program or service that's been implemented for Bright Gifted children after multiple requests that were asked of the Board"*. (Transcript, page 63, lines 27-30) Ms. McRae stated, *"As of December 2000 they [UCDSB] did not have a criteria. It was still under development"*. (Transcript, page 65, lines 21,22)

The appellant directed Ms. McRae to the Elementary and Secondary Statistics, October 1998, (Exhibit 9), the Elementary and Secondary Statistics, October 31, 1999, (Exhibit 10) and to the

Elementary and Secondary Statistics, October 31, 2000, (Exhibit 11). Ms. McRae read the number of gifted students in secondary and elementary as reported on these annual reports, which showed a steady decline of gifted students in both the elementary and secondary levels. The appellant then directed Ms. McRae to the UCDSB Budget for the Fiscal Year, 2001 (Exhibit 12). Ms. McRae stated the statistical reports indicate that the proportion of students identified as gifted changed from 2% to 0.3%. She reported other exceptionalities remained *“almost intact within their population”*. (Transcript, page 3, lines 67,68)

The appellant directed Ms. McRae to the UCDSB Special Education Plan, 1999. (Exhibit 13) Ms. McRae read the seven recommendations regarding the intellectually gifted. Ms. McRae stated *“there was no progress whatsoever on any of the (1) to (7) recommendations for Bright Gifted”*. (Transcript, page 69, lines 23,24)

Mr. O'Brien led the cross-examination and referred Ms. McRae to the UCDSB Program and Staffing Proposal. (Exhibit 15) Ms. McRae agreed that this document was intended to provide direction to a Superintendent, which may or may not be accepted by the Board. Mr. O'Brien initiated discussion about Ms. McRae's dissenting vote on the Special Education Plan, and stated that he believed it was *“on placement only, not on identification”*. (Transcript, page 76, line 6)

The appellant during re-examination questioned Ms. McRae regarding her objection to the Special Education Plan. Ms. McRae stated, *“the reason I voted against the Special Education Plan is that everything that had been outlined in the Plan as an objective for year one was not carried forth and not carried through”*. (Transcript, page 76, lines 28-30)

• **Mr. Gino Giannandrea**

Mr. Giannandrea is Director of Education for UCDSB. The appellant asked Mr. Giannandrea when he first became aware of the parent's intention to appeal the lack of identification of their child as gifted. Mr. Giannandrea stated after receiving the letter dated Oct. 29, 1999 (Exhibit 15) he *“passed it onto Colin Vickers with a note that [said] for action”*. (Transcript, page 80, lines 25,26) The appellant continued to question Mr. Giannandrea concerning the timing of responses. He said he normally delegated responses to letters and e-mails. Subsequent

questions pointed to the long time it took Mr. Giannandrea to respond to the letter (Exhibit 17) from Mr. Cleary M.P.P., dated April 20, 2000, which had restated the appellant's concerns about the *"lack of appropriate programs and services available to meet the needs of gifted students in the area"*. Mr. Giannandrea stated after receiving a second letter from Mr. Cleary M.P.P., a reply was sent May 2001, one year after the original letter was received.

Mr. Giannandrea in response to Mr. O'Brien's cross-examination described the size of the UCDSB and its administrative structure. Mr. Giannandrea explained that most mail is delegated to the Superintendent responsible for those areas for responses and action. The appellant followed-up with further questioning concerning the delays. Mr. Giannandrea stated he believed letters and requests were responded to in a timely matter but was surprised that Mr. Cleary, M.P.P. had not received a reply from a letter a year earlier. (Transcript, page 88, lines 13,14)

• **Dr. Janice Leroux**

The appellant presented Dr. Leroux as a specialist with thirty-five years of experience in gifted learning. Dr. Leroux is a part time Professor in Adjunct in the Faculty of Education, University of Ottawa where she conducts graduate studies in the field of gifted exceptionalities. When asked how to evaluate a student to determine giftedness, Dr. Leroux indicated that a multi-dimensional approach is used including both status information and action information. She stated, *"a psychological test is only a moderate indicator of success"*. (Transcript, page 91, lines 30,31) Dr. M. Alexis asked Dr. Leroux if she agreed with a statement found on page twelve of the document entitled Best Practices for Gifted Learners (Exhibit 18). Dr. Leroux stated she agreed with the statement in the document that said *"The literature does not support the use of intelligence tests as the sole identifier of gifted populations"*. (Transcript, page 94, lines 21,22)

Dr. Leroux stated she had studied the student's file, interviewed the student and reviewed the assessment data provided by the student's parents. The appellant asked Dr. Leroux, if she thought the student was gifted based on the Ministry of Education's definition. Dr. Leroux replied

*"I would suggest that this child, by the definition used in Ontario, and by [the student's] performance, definitely meets the criteria for gifted"*. (Transcript, page 97, lines 10,11) The appellant submitted Exhibit 21, the student's IEP (Individual Education Plan). Dr. Leroux, from reading the IEP stated, *"Every child should be entitled to these kinds of*

*opportunities...this is just good education".* (Transcript, page 98, lines 23,24)

Dr. Leroux congratulated the Board on the Special Education Plan and noted that if it were implemented with staff and resources, it could be a model. She went on to state if *"the Action Plan and Recommendations were undertaken, the gifted children would be well served because of the variety of services and programs which are recommended here"*. (Transcript, page 102, lines 16-18)

Mr. O'Brien began cross-examination asking Dr. Leroux about the wide range of measures used to identify students across Ontario. Dr. Leroux indicated many different tests and methods are used, depending on the Board. The WISC-R (Wechsler Intelligence Scores for Children - Revised) is used most frequently. Mr. O'Brien asked Dr. Leroux *"But am I not correct that the determination of this type of identification is determined by the Board, by the criteria established and that the student has to meet those criteria?"*(Transcript, page 107, lines 19-21) In response, Dr. Leroux suggested, *"the intent of the Province was not to identify out, but rather identify in"*. (Transcript, page 107, lines 18-22)

Mr. O'Brien questioned Dr. Leroux on how she obtained her knowledge of what had been implemented for the student in the Board. Dr. Leroux stated *"only in my discussions with the child and reading the documentation and discussion with the parents"*. (Transcript, page 108, lines 24,25)

• **Ms.S**

Ms. S is a qualified teacher who has been teaching since 1987. She has completed a number of additional qualifications including Special Education Part 1. Ms. S stated she had known the student since January 2000 and had not been asked to fill out a Teacher's Questionnaire during the psychological testing of January 2000. Ms. S explained she was part of a team that wrote the student's IEP and she began implementing the IEP in her classroom in September of 2001. Ms. S described some accommodations she was using in her classroom. (Transcript, page 116) Ms. S went on to describe the student's academic performance as *"above average"*. (Transcript, page 116, line 30) During cross-examination Mr. O'Brien questioned Ms. S on the availability of a Regional SERT (Special Education Resource Teacher) to assist her with the I.E.P. Ms. S replied that the SERT had assisted *"not in the writing but in consultation"*.

(Transcript, page 117, line 4) Ms. S stated the new SERT had helped with *“providing resources and developing programs”*. (Transcript, page 117, line 21)

- **Dr. Ian Nagy**

Dr. Nagy is an Assistant part time Professor, at the University of Ottawa. The appellant asked Dr. Nagy about his involvement with the student. Dr. Nagy taught the student in a group of twenty-two at a mini enrichment course at the Ottawa University. Dr. Nagy commented that the student was *“one of the leaders in terms of taking initiative, speaking, participating and asking questions”*. (Transcript, page 121, line 23)

Mr. O'Brien asked Dr. Nagy about the administrative organization of the course. Dr. Nagy reported that the course had been going for twenty years and the students are selected by their teachers and sent by their school boards. Dr. Nagy also stated this was his first time instructing the course and he was asked to fill in at the last minute.

- **Dr. James Sophia**

Prior to beginning the testimony of Dr. James Sophia, the appellant reviewed documents which Dr. Sophia had brought to the hearing at the request of the appellant. Dr. Sophia indicated in his testimony that the Psychology Department limited its role to psychological testing, as part of the identification for gifted. He stated that it is the IPRC, which determined whether the child is gifted, or not. The Psychological Department could administer academic tests if the school does not have any data to support high academic findings. To the best of his knowledge, no child has ever been identified as gifted in the UCDSB with scores below 130. Dr. Sophia stated that he reviewed the student's psychological file but did not review his OSR file.

In response to Mr. O'Brien's cross-examination, Dr. Sophia described the process and criteria used to identify a gifted child in the UCDSB. Dr. Sophia indicated that the intellectual assessment has the highest weight. He stated that the reason that no child with a WISC score below 130 had ever been identified as gifted is due to the need for the UCDSB to establish a point or a boundary that is the measurement of the child's intellectual ability, and this is also a crucial element of what the Ministry considers to be a gifted child. (Transcript, page 137, lines 26-30)

The appellant further questioned Dr. Sofia regarding the specific number that is the right number to use (in reference to I.Q. Score). Dr. Sofia replied: *“Well, it is generally agreed upon by most individuals who use the term gifted that if we are looking for a cut-off score, it’s 130 or at the 98<sup>th</sup> percentile”*. (Transcript, page 140, lines 20-26)

The Tribunal asked about the test instruments normally used when a student is being tested for potential giftedness. Dr. Sophia responded, *“that the Wechsler [Scales] and the Stanford Binet Intelligence Scales would be the instruments used”*. (Transcript, page 141, lines 15-18.) When asked by the Tribunal about the Psychology Department’s practice in receiving Psychological Reports from other boards, Dr. Sophia responded that the Psychology Department would receive the report and a member of the department would share the report with the principal. *“It’s ultimately the principal’s call as to where we go from here...It’s really the decision of the IPRC to look for supportive information that’s received from other boards and determine if the child meets the criteria or not”*.

(Transcript, page 142, lines 15-21)

The Tribunal also asked what ‘very superior’ would mean in a psychological report. (Transcript, page 142, line 22-24) Dr. Sophia replied that *“Very superior means at the 98<sup>th</sup> percentile, typically.”* (Transcript, page 142, line 26,27) Dr. Sophia continued *“... people use these qualitative terms sometimes indiscriminately so, depending on the report and how its written, what I sometimes do is contact the Psychology Department from the Board that I received the report from, and I will ask for the scale scores or the numerics if I’m not certain of what the numerics are.”* (Transcript, page 142, lines 27-30)

- **Mme.L**

For the testimony and cross-examination of Mme.L, Roger Davidson, who speaks English and French fluently, translated Mme. L’s testimony.

Mme. L had been the student’s French Immersion teacher for two years. She never completed a questionnaire for the student and never participated in the writing of the IEP but was asked her opinion for the IPRC. Mme. L indicated that she had never seen the ‘Giftedness’ section of the Special Education Companion from the Ministry of Education Curriculum Planner. (Exhibit

23) She also indicated that she had not seen similar documents describing modifications for gifted students.

Mme. L testified that the IEP for the student was to be in effect for September of the year 2000. She indicated, “*that [the student] was able to respond to a bit more elaborate or greater in depth questions*”. (Transcript, page 146, lines 23-25) Mme. L also described the strategies that she used to try to enrich the student’s program in her classroom. Regarding the student’s academic performance Mme. L stated, “*[The student is] above average. [The student] would be definitely, most definitely in the first quarter of students in the classroom.*” (Transcript, page 147, lines 17,18)

Mme. L clarified, under cross-examination, that she was a teacher at School in the French Immersion Program and had been at the school for sixteen years. Mr. Davidson then read into the record, the January 16, 1992 Psychological Assessment of the student which had been written in French. (Transcript, page 15,lines 5-13)

### **Summary of Respondent’s Witness Testimony**

- **Mr. Colin Vickers**

Mr. Vickers is the Superintendent of Education responsible for Planning and Operations for the Upper Canada District School Board. In 1996 he was given the task of Superintendent of Program which included Special Education for the Stormont, Dundas and Glengarry Public School Board and upon amalgamation, worked with another colleague to bring together the Special Education Programs and Services of the four predecessor Boards of the UCDSB. Mr. Vickers outlined the steps taken to develop the Special Education Plan and its subsequent acceptance by the Ministry of Education. (Transcript, page 158-160)

Mr. Vickers described the process to develop Meeting Their Needs, (Exhibit 39), the Procedural Handbook for the UCDSB, and its subsequent distribution and in-service for principals and special education teachers. (Transcript, page 160-162) Mr. Vickers described The Special Education Management Planner, 1999/2000 (Exhibit 40), a document on gifted students. He

described the process used to develop that document. (Transcript, page 162-164)

Mr. Vickers spoke about the criteria within the handbook that outlined the UCDSB criteria for identification of the Ministry of Education's categories of exceptionalities, and stated the operational guideline for the Board at the time..."*On page 1, the Intellectual Criteria for Giftedness-number 2, the Psychological Assessment. The I.Q. score would receive the highest weighting of the criteria ratings and that score being 130.*" (Transcript, page 165 lines 14-16)

Mr. Vickers spoke to the 'out of district referrals' (Exhibit 41) and the criteria used for the process to be followed when a student who may have had a recent assessment comes from another Province or District. (Transcript, page 166, lines 11-21) He made reference to the identification procedures used by the Toronto and Renfrew District School Boards. (Exhibit 42) and he further indicated he "*felt some comfort that we were following a pattern that was going on in our district*". (Transcript, page 167, lines 16,17)

Mr. Vickers then read the statement of the Special Education Appeal Board, January 2001. It read, "*The Appeal Board Members have reviewed the information presented to them and unanimously recommend that the IPRC report of June 2000 concerning [the student's] identification be implemented.*" (Transcript, page 168, lines 8-11)

Mr. Vickers described the process he used to share information with SEAC members and within that section of his testimony, stated that he was not confident in sharing statistics, as there are difficulties with the data bases that exist within his board in the statistical information about exceptional students. As a final point Mr. Vickers described his role, in suggesting to Dr. Sophia that the Referral Committee consider the student for assessment.

The appellant began her cross-examination of Mr. Vickers asking him to describe what the Ministry of Education wanted the UCDSB to specify further in its Special Education Plan in relation to gifted programming. Mr. Vickers stated that "*...the one page report that came from the Ministry, [was we accept the Plan, please give a [] fuller description of the range of programs and services]*". There was no reference to any area of exceptionality." (Transcript, page 171, lines 5-7) He continued "*..there is this statement there that talks about the range of*

*placements being one of three, being regular class, regular class with resource support, special class and they wanted a more extensive definition of that...*". (Transcript, Page 171, lines 8-10)

The appellant questioned Mr. Vickers about the new definition of giftedness. Mr. Vickers stated that it was "*published*" in August 2000. Further "*the new criteria... would have been in place at that time noting that the new criteria had many similarities to what we were using before, in parts.*" (Transcript, page 173, lines 24-26)

When questioned on the weighting given to the scores on the psychological assessments, Mr. Vickers stated, "*it's a holistic package, that information is gathered from various sources.*" (Transcript, page 177, lines 16-17) He continued "*because it has the highest weighting there would be a point in decision making where it would have some predominance.*" (Transcript, page 177, lines 20,21)

The appellant questioned Mr. Vickers on his comments on his lack of confidence regarding the statistics about gifted students in the Board. Mr. Vickers indicated, "*There may be more or fewer exceptional students of all different exceptionalities, yes.*"(Transcript, page 178, lines 21,22)

The appellant questioned Mr. Vickers on the process of referral to the Referral Committee, and through this line of questioning Mr. Vickers's responded that the formal parental request for an IPRC was sent on April 22, 1999. He then phoned the Referral Committee to arrange for an assessment, which was completed in January 2000. (Transcript, page 181, line 31)

Mr. O'Brien in re-examination, asked questions regarding the time it takes to do assessments/reassessments and Mr. Vickers stated that any request for an assessment is given consideration. Mr. Vickers described the amount of time it takes staff to do a psychometric assessment. (Transcript, page 183)

Mr. Vickers clarified for Mr. O' Brien that most of the draft documents referred to in his (Mr. Vicker's) testimony would have gone to Mr. O' Brien who took over Mr. Vicker's portfolio after June 5, 2000.

The Tribunal asked for the location of the IPRC Report of June 2000 that Mr. Vicker's had referred to when he read the decision of the Appeal Committee of January 2001 into the record. Mr. Vickers responded, *"I believe that that date is incorrect. There was no IPRC in June 2000. I believe that's speculating that refers to an IEP of 2000"*

(Transcript, page 185, lines 15-16) Mr. Vickers indicated that the record of the earlier IPRC decision of April 17, 2000, was not in the Board's submission, but would be entered by Principal MacLeod. The appellant noted that the IPRC decision was in Exhibit 21.

• **Dr. Jim Sofia**

Dr. Sophia is employed by the Upper Canada District School Board as the Coordinator of Psychological Services for the Eastern Region and is a Psychologist providing consultative and direct service to students of all exceptionalities.

Dr. Sophia read into the record the Ministry of Education's definition of giftedness. *"An unusually advanced degree of general intellectual ability that requires differentiated learning experiences of a depth and breadth beyond those normally provided in a regular school program to satisfy the level of educational potential indicated."* (Transcript, page 188, lines 20-24) He continued by describing the Board's criteria for the identification of giftedness as established in January 1999. The criteria included

- 1 *"Academic assessment or evidence that the student is functioning at an advanced academic achievement or level of at least 2 years or 2 grades higher than their chronological age.*
- 2 *The student may be nominated by the child's parent, a peer, or a teacher.*
- 3 *Another criteria is that the student may show some strengths in other areas than those measured by an IQ score such as Gardiner's Multiple Intelligences which would include for example social perceptiveness, advanced degree of social interaction skills. [] There are other areas that are related to physical acumen, kinesthetic body image which is akin to those individuals that could be very athletic, for example.*
- 4 *Another criteria has to do with a demonstrated behavior in terms of creativity.*
- 5 *Another criteria has to do with task commitment and this is observed in behaviors which are related to persistence at an activity whether in school or an activity related to a pursuit, academic pursuit, either in school or outside of school.*
- 6 *The last area that I'll talk about is the [Psychoeducational] Assessment, which verifies the intellectual ability. An advanced degree of intellectual ability, using a standardized instrument, which would result in a verbal, a full scale and a performance IQ of 130 or above which corresponds to the 98<sup>th</sup> percentile or above. And this criteria is a determining criteria. In other words, the student must attain this criteria".* (Transcript, page,188, lines 30, 31; page 189, lines 1-25).

Mr. O'Brien asked Dr. Sophia about the most widely used method for determining intellectual

ability of school age children to which Dr. Sophia replied, *“... it’s important for those who test students who use psychometric tools, to use those tools that have a high degree of validity and reliability, and that are known properly for the age group and the population that you are working with”*. (Transcript, page 190, lines 2-4) Dr Sophia went on to say *“...no individual test is culture free but nevertheless, the tests that we use at the Upper Canada DSB are the same tests which are used in North America which would include the Wechsler Scales and the Stanford Binet Scales.”*(Transcript, page 190, lines 6-8)

Dr. Sophia described the features on the Wechsler Scales that were used to assess the student. He indicated, *“The verbal domain is very highly correlated to school achievement...”*.(Transcript, page 191, lines 1,2) Dr. Sofia then described the non-verbal [domain] and indicated that *“these kinds of thinking skills are highly correlated with mathematics, mathematical reasoning especially algebra and geometry. [and] are also tapped into some of the areas such as computer programming and visual, technical design-type subjects that are taken in high school and college”*. (Transcript, page 191, lines 25,26) Under cross-examination by the appellant, Dr. Sophia acknowledged that irrespective of the other five criteria, *“if the WISC scores are not above 130, the student is not identified”*. (Transcript, page 192, lines 20,21)

Dr. Sophia, when questioned by the Tribunal indicated that the House Tree Person Test that was used in the assessment did not result in an IQ score, but was used to making some interpretations about how a child feels about him- or herself. Dr. Sophia felt these drawings by themselves are not very reliable. (Transcript, page 193, lines 7-10)

• **Dr. Geoff Langford**

Dr. Langford had been a psychologist with the Stormont, Dundas and Glengarry School Board from October 1986-2000, and he worked for the UCDSB until November 2000, when he began working full time as a Psychologist in private practice.

Dr. Langford assessed the student on January 27, 2000 *“to determine if [the student] met the criteria for being identified as a gifted student.”* (Transcript, page 199, lines 27,28) Dr. Langford described the referral process that was used prior to his assessment of the student. He noted

that the student had some prominent tension feelings. These feelings of tension were observed during the assessment conducted by Dr. Patricia Kauffman, a psychologist with the UCDSB, in October 1995. He stated that this tension “...*probably might have affected [the student’s] scores to some degree.*” (Transcript, page 199, lines 19,20) Dr. Langford elaborated on the results of his assessment (Exhibit 19). In discussing the assessment behavior Dr. Langford indicated that he thought that mathematics was the only area where the student felt under challenged. (Transcript, page 200, lines 17-18) Dr. Langford described the use of norms and stated that Dr. Kauffman also used the WISC III, and had scored it using Canadian norms. In the assessment that Dr. Langford conducted, The student’s score on the verbal section of the test was an IQ of 126 and the student’s score on the performance section was an IQ of 109 for an overall score of 120. Dr. Langford noted, “*One thing that’s interesting there is the drop in the performance IQ measure and that (’s) merely a reflection of the norms.*” (Transcript, page 201 lines 4,5) He went on to say, “ *That [the student] didn’t meet the criteria as being identified as gifted which was an IQ of 130 or more or being at the 98<sup>th</sup> percentile, but clearly had some very high scores within [the student’s] profile and certainly in specific areas there would be needs for enrichment.*” (Transcript, page 201, lines 10-13)

Dr. Langford commented on the poor score on the picture arrangement sub-test, and felt that impulsivity was the reason for the low score. As well he made reference to “... *some possible mild emotional difficulty. Dissatisfaction in [the student’s] environment, and again what that environment might be referring to is, I’m not sure. It could be school, home or anything.*” (Transcript, page 202 lines 19, 20,21)

With respect to his assessment of the student, Dr. Langford agreed with the appellant’s point regarding the criteria for giftedness, that giftedness is more than a score on a single test. He stated, “*[The student’s] assessment was to determine whether or not [the student] met our current Board criteria for giftedness and was not meant to be a wide ranging and thorough assessment for giftedness.*” (Transcript, page 207, lines 1,2)

He spoke as well about enrichment activities and the use of incentives for children. He discussed his recommendations for a few changes to the student’s IEP, including the development of leadership skills, learning task analysis, and flow-charting. (Transcript, page

The appellant questioned Dr. Langford on the number of newly identified gifted children in the UCDSB since amalgamation. Although Dr. Langford had the impression that there were fewer identifications of gifted students during the period from 1997-2001, he didn't have the information to answer that line of questioning. (Transcript, page 212)

There was some discussion on the meaning of the handwritten numbers on the report and the origin of them. Dr. Langford stated that he recognized the handwriting on the assessment as that of his wife's, Cheryl Langford (Psychometrist with the UCDSB). Dr. Langford stated that he used other sources of information in preparing to assess the student, including the test by Dr. Kauffman, and the OSR. He added, "*And I can't recall in [the student's] case exactly when it occurred.*" (Transcript, page 215, lines 3,4)

During cross-examination, the appellant questioned Dr. Langford about the identification of gifted students in the UCDSB. Dr. Langford indicated that the amalgamation process of the four former boards resulted in the Psychology Department being reduced. He stated that there was a reduction in services and consequently "*we saw fewer gifted referrals and gifted assessments. I think that the children that were having extreme difficulty functioning at all in an academic program assumed a higher priority.*" (Transcript, page 212, lines 18–21) The appellant further questioned about the handwritten comments in the margins of the fax sent to Dr. Langford by G. MacLeod. (Exhibit 34 – May 24, 2000) Dr. Langford agreed that this was his handwriting and that at the time he really couldn't say whether or not the student was gifted. (Transcript, page 217, lines 10-15) The appellant questioned Dr. Langford further about his comments written on Exhibit 35. (an e-mail from the appellant, May 24, 2000). In these comments he stated, "*funding does limit what can be offered.*" (Transcript, page 218, line 1) Dr. Langford continues, "*my understanding is [for] children with extreme handicaps and disability there is specialized funding under the ISA (Intensive Support Amount), ISA Regulations.*" (Transcript, page 219, lines 14,15) Dr. Langford confirmed comments he had made in an e-mail (Exhibit 36 – June 13, 2000) and stated, "*[The student's] assessment was to determine whether or not [the student] met our current Board criteria for giftedness and was not meant to be a wide ranging and thorough assessment for giftedness.*" (Transcript, page 228, lines 9-12)

A discussion followed on the student's low picture subtest score and its possible effect on depressing the student's overall test scores as well as the confidence interval of the test scores.

Mr. O'Brien had Dr. Langford review his qualifications and experience and the referral process for assessments in the UCDSB. Dr. Langford explained, upon request, some details of the WPPSI (Wechsler Preschool & Primary Scale of Intelligence) and its use for children up to the age of six. When questioned about whether the test booklet [WISC-III Canadian Record Form] (Exhibit 30) was the student's test, Dr. Langford indicated that in fact, he (Dr. Langford) recognized his handwriting and that yes, the booklet was the student's. As well Dr. Langford explained that he would make "jot notes" in the margins for his own benefit and the working notes are not his final determination. He added some information regarding an analysis of the WISC III describing the 4-factor solution, which breaks the intellect into four areas. Dr. Langford used the student's assessment to explain Verbal Comprehension Index, Perceptual Analysis, Freedom from Distractibility Index and the Processing Speed Index. According to Dr. Langford, "*When we look for giftedness, we look for a consistently high score in each of those factors.*" (Transcript, page 228, lines 10,11)

- **Glenn MacLeod**

Mr. MacLeod is principal of Central Public School. He stated that he believes that in his school of four hundred students in French Immersion, the student had intellectual peers. He described the work done to create the student's IEP, with help from Mr. M, a teacher from a neighboring school, and Mrs. D, a SERT from the Board office. Parental input was sought for any ideas, changes or concerns. Two additional IEP's were created throughout the student's grade seven and eight years to plan an enrichment program for the student. Mr. MacLeod described the enrichment activities that occur at the school.

The appellant questioned Mr. MacLeod on the date of the writing and implementation of the student's IEP. According to Mr. MacLeod, the process began in the fall of 1999 and began to be implemented in October of that year.

The appellant began a line of questioning regarding the request made for a formal identification

of giftedness for her child. During that questioning, Mr. MacLeod stated that the “*actual IPRC didn’t take place until April 2000.*” (Transcript, page 238, lines 6,7) The written report of the meeting had been entered as Exhibit 21 (IPRC Committee Determination, April 17, 2000). The Chair of the IPRC, Mr. MacLeod, and the parents did not sign the IPRC form. The decision of that April 17, 2000 IPRC was, “*Continue in Grade 8 program, continue to follow and advise IEP.*” (Transcript, page 239, lines 16-17)

Mr. MacLeod stated that the Board policy for the Mini-Enrichment program indicated that parents of children taking the Mini-Enrichment program paid \$120.00 per student. The appellant had expressed her dissatisfaction with having to pay for something that was to be part of an enrichment program and part of her child’s IEP.

Mr. O’Brien in re-direct, referred Mr. MacLeod back to a phrase in the appellant’s letter to Mr. MacLeod. “*the formal identification can always be done at a later date when the results of the Grade six testing or other aptitude testing is available.*” (Transcript, page 241 line 21,22)

When asked by Mr. O’Brien, “*When was that aptitude test done? The assessment by Dr. Langford?*” (Transcript, page 241, line 23) Mr. MacLeod replied, “*That would have been done in January 2001.*” Mr. O’Brien then said “*And the IPRC would follow that?*” Mr. MacLeod replied in the affirmative. (Transcript, page 241, line 24-26)

The Tribunal asked for clarification of the number of students formally identified as gifted who attended the Mini-Enrichment course. Mr. MacLeod responded that none of the students was formally identified as gifted. The Tribunal then asked how many students at the school of three hundred ninety eight were identified as gifted. Mr. MacLeod answered, “*One.*” (Transcript, page 242 line 28)

Mr. MacLeod stated that there was not any screening for gifted at his school. With respect to intellectual testing, there was no differentiation for students in his French Immersion School who have fifty percent of their education in French.

When asked about the delivery system for gifted students in his board, Mr. MacLeod replied

that he was aware that a SERT for gifted had been appointed. The schools work within the school setting on an IEP to provide extension of the curriculum and to provide enrichment within the school setting. He also stated, “*we do not have a contained classroom or program for gifted students.*” (Transcript, page 243, line 31). Mr. MacLeod indicated that he was not aware of the program options available for gifted students at the secondary level, but would investigate this if a parent asked. A transition meeting would look at what the needs are and what would be in place for the high school level. (Transcript, pages 243, 244)

### **Summary Statement of the appellant**

The appellant began her summation by stating that the Board's only issue is that her child does not meet the Board's criteria which “*is a cut off score of 130 on a psychometric test*”. (Transcript, page 248 line 8). Even though there is “*consideration of six criteria no child with an IQ score of less than 130 has ever been identified*”.

(Transcript, page 248, lines 10,11) The appellant further stated that the UCDSB identified fewer gifted students than expected for the population. In statistical reports presented the numbers of identified gifted students are low and declining. Presently 0.51 % of the UCDSB population is identified gifted.

The appellant maintained the Board did not comply with the timelines set out in the Education Act. “*It took a full 10 months to obtain testing for [the student], a further 2 ½ to arrange the IPRC meeting, another 6 weeks to set up the 2<sup>nd</sup> IPRC meeting and an incredible 7 months to arrange for the Appeal Hearing*”. (Transcript, page 249, lines 4-7) She also claims the UCDSB has not applied sufficient resources to meet the needs of the gifted population. The Board has recently hired two more gifted SERTs but the Eastern Region SERT began in March 2001 and serves approximately 10,000 students. The appellant pointed out that the student's testing was not conducted in the usual manner. Dr. Langford did not possess a complete record for the student. “*There was no teacher contact*”. (Transcript, page 250, lines 4,7)

Dr. Langford stated his sole purpose was to test intellectual ability and “*in his notes he comments that, I am not saying that [the student's] not gifted...*” (Transcript, page 250, lines 12,13). The appellant questions if the frustration, tension and anxiety noted by Dr. Langford in

the House Tree Test *“could be related to insufficient stimulation /or challenge in his educational environment”*. (Transcript, page 250, lines 23,24) *“Dr Leroux also told us that the literature does not support the use of a single test as a means of identification.”*

(Transcript, page 250, lines 29,30)

The appellant presented a SEAC member who had represented ABC (Association for Bright Children) as a witness. She stated she left her position due to frustration at the lack of implementation by the Board of the Special Education Plan in regard to the gifted exceptionality. The appellant noted in a Board’s work group report (Exhibit 15- version 2) under the heading Historical Overview, *“We have seen very few students referred to identification due to a variety of reasons and consultants for the gifted no longer exist”*.

(Transcript, page 251, lines 31; page 252, line 1)

The appellant noted that the Ministry definition of giftedness does not mention a score or even psychometric testing. *“Dr. Sofia’s testimony confirmed that the number used may vary”*. (Transcript, page 252, lines 11,12) The appellant noted, *“the only placement offered to gifted students in the UCDSB is regular classroom with resource support”*. (Transcript, page 252, lines 21,22) The appellant stated the student’s IEP was initially dated October 12, 1999. However both Ms. S and Mme. L testified that the IEP was first implemented in September 2000. Neither of these teachers possesses formal training in gifted education.

The appellant stated that from the testimony by the student’s teachers, Professor Nagy, Dr. Leroux, the student’s grandfather and father, that student possesses higher than average general intellectual ability, academic aptitude, creative thinking, leadership skills, musical ability and is avid in [the student’s] interest for all sports especially basketball and soccer. The student is also a very good chess player and public speaker. (Transcript, page 253, lines 11-16)

The student requests that her child’s intellectual strengths be identified as signs of giftedness, and that her child’s educational program build on her child’s extraordinary strengths and help compensate for weaknesses. To meet her child’s social and emotional needs, the appellant requests that her child be offered opportunities for collegiality with gifted peers for more than a few days in a school year. (Transcript, page 253, lines 19-24)

The appellant requests that student be identified as gifted and requests that an appropriate secondary school program be provided by UCDSB for 2001/2002 or that such services be purchased from another board with transportation and other additional costs be assumed by UCDSB.

### **Summary Statement by Mr. Phillip O'Brien**

In his summary statement Mr. O'Brien stated, "*The position of the Board of this Tribunal is that we are obligated to determine the intellectual exceptionality following the Ministry of Education's directions.*" He added "*this definition of the Ministry of giftedness states that it is [is an unusually advanced degree of general intellectual ability].*" (Transcript, page 255, lines 4-6, and lines 13,14) The Ministry's focus is on the intellectual ability of the student. The Board had created an annual Special Education Plan with community consultation, passed by SEAC and the School Board and accepted by the Ministry of Education. The Board also had created a Procedures Handbook, which outlined the criteria for determining intellectual ability. The Board uses criteria similar to that used by other Boards in the Province. The scoring of 130 or 98<sup>th</sup> percentile is shown to be required. (Transcript, page 255, line 24)

He indicated the Board assessed the student twice and determined from both these assessments that the student did not meet this intellectual criteria. The student's talents and interests were noted and commended, and recommendations were made for staff and for the parents. The assessment instrument was the most widely used instrument in Ontario and administered by a Board psychologist.

The Board has recognized the need to work on gifted education and appointed three new SERTS in a consultative role to develop the gifted programming for the Board. New staff has been added in all the different areas of Special Education.

Mr. O'Brien described the sequence of events that occurred in managing the process that led to this Tribunal. As well, he reiterated that the administration is trying to make sure that the Board is providing the same programming across its three regions of the Board. The Board followed the Ministry's directions and definition for giftedness and had a plan in place that the Board and staff followed. Professionals who worked in a caring and professional manner carried out the

assessments.

### **Legal Framework**

The Tribunal made its decision within the context of the Education Act, Section 170. Reg. 181/98 sets out the procedures for placement of exceptional pupils.

The Education Act R.S.O. 1990, c.E.2, Section 170 (1)7 “requires that school boards provide or enter into an agreement with another board to provide in accordance with the regulations special education programs and special education services for its exceptional pupils.”

In addition, the Minister has an obligation under section 8(3)b which has led the Ministry to issue categories of exceptionality, and boards are required to employ such definitions as established under this clause.

There appeared to be some confusion in the evidence about the relationship of the ISA (Intensive Support Amount) and the IPRC (Identification Placement Review Committee). The Tribunal points out that the ISA is for funding purposes only, and the IPRC deals with identification and placement issues.

The Tribunal wishes to remind the Board of its legal responsibilities under the Education Act as noted above.

### **Reasons for The Decision**

The Tribunal reviewed all the evidence presented during this hearing. We have concluded that two critical issues were addressed during these proceedings.

The first critical issue was the criteria being used by the UCDSB to identify gifted students. The Board's evidence showed that it is using a single factor to determine the identification of giftedness – the I.Q. score of 130. The Upper Canada District School Board did not identify the student as an exceptional student – gifted, as he did not meet the criteria established by the Board. As stated in the criteria, without the score of 130 all the other criteria are basically irrelevant to the decision, and become merely support based on the decision of I.Q. The

Tribunal rejects this approach and fully agrees with the evidence presented by the appellant, that a multi-faceted approach to identification is important, and is in keeping with current research on giftedness.

We have accepted the evidence of the parents' witnesses that the student is gifted in many areas among which are included: general intellectual ability; specific academic aptitude in the mathematical area, and leadership skills. The student has a broad range of interests and abilities characteristic of gifted students. It is our view that the board should have included factors other than an I.Q. score of 130 as the single determining factor to identify the student as gifted. Therefore, in this case, the Board should have considered all the other criteria in addition to I.Q. and identified the student as gifted

Dr. Leroux, witness for the appellant, indicated that in her view *"it is naive to sum up the ability of one individual with an individual score because high ability or giftedness is really not incorporated in one single number."* She went on to state, *"Tannebaum's research (1997) said that it's irrelevant to count on one number as an indicator of success"*. The appellant's written submission to the IPRC contained a direct quote from Mindy Kornhaber, who works with the Howard Gardner research project – Project Zero.

M. Kornhaber stated *"First, no single test should ever be used to make a decision about an educational placement. This violates the ethical standards of the testing profession."*

(A copy of its new Standards, published jointly by the American Educational Research Association, The American Psychological Association and the National Council on Measurement in Education). Second *"though it is a widespread practice to rely on a cut off score, this practice is utterly and thoroughly unacceptable. Every test has some degree of measurement error. In essence, such error indicates that a score several points above and below a particular cut off are conceptually, and from a technical standpoint, indistinguishable."*

The second critical issue is the discrepancies among the tests. Both the appellants and the respondent introduced evidence regarding the assessments that were completed on the student. The initial assessment completed in January 1992, when the student was four years old, placed the student in the *"very superior range"* (Exhibit 1). Later the psychological assessment completed in 1995 indicated a verbal scale in the very superior range. The WRAT

(Wide Range Achievement Test) results of 1995, gave the student a Reading Score at Grade 5, and Spelling at Grade 7, while the student's current grade placement was Grade 3. On the CCAT (Canadian Cognitive Abilities Test) completed in 1996, the student had a verbal score of 128 and a non-verbal score of 136. When the student was in grade three, the student scored at a grade five level in mathematics on the CTBS (Canadian Test of Basic Skills). The student correctly answered 39 out of a possible 40 items in the mathematics component on the grade six Provincial Assessment, a level four, the highest level of achievement in the provincial standards. On every test there was some indication of very superior abilities.

However, the scores on the most recent psychological assessment of January 2000 dropped significantly. These results were an anomaly to the previous assessment results, and are inconsistent with the many accomplishments that the student has continued to achieve, and the manifestations of giftedness the student presents. The appellant asked Dr. Langford to explain the discrepancies. The Tribunal did not find the explanations sufficient or compelling enough to challenge the evidence presented by the appellants.

In addition, the Board and the parents presented examples of activities in which the student is participating in at his school. The evidence presented by the Board indicated that only one other student in the student's present school has been identified as gifted (the student's younger sibling) and the wide range of activities in which the student participated were available to everyone rather than a peer group of gifted students. The Tribunal believes that the gifted program should address the student's characteristics of giftedness as presented by the appellants, and should provide instructional techniques and appropriate educational challenges within a group of gifted peers.

Identification of gifted children is not simple, however, it is not dispensable given that these children need appropriate educational responses to ensure that they can cope with and reach their educational potential.

The Tribunal recommends that a transition plan for the student be developed immediately to delineate appropriate gifted programming to occur during the student's secondary school years. Although a transition plan is not a legal requirement of the IEP for students fourteen years or older who are identified solely as gifted, such a plan would help the student to make the transition to secondary school and to postsecondary education.

The Tribunal noted that communication between parents and the Board had ceased to be effective. The Tribunal hopes that in the development of the plan, the parents and the Board will reach a better working relationship and communication will be re-established. Better communication between the family and the Board can only help with the student's progress. The Tribunal has no doubt that both parties desire the student to have an effective education that will foster the student's level of potential.

The Tribunal is unanimous in its decision that the UCDSB provide a placement for the student in a gifted program that will meet his needs.

**Decision**

- 1 The Tribunal grants the appeal and orders that the Upper Canada District School Board identify the student as an exceptional pupil – gifted.
- 2 The Tribunal orders the Upper Canada District School Board to place the student in a gifted Secondary School program.

Marilyn Thain – Chair \_\_\_\_\_

Paula Barber – Member \_\_\_\_\_

Sharon Carson – Member \_\_\_\_\_

September 24, 2001