



IN THE MATTER OF the *Education Act*, R.S.O. 1980, c. 129:  
IN THE MATTER OF Ontario Regulation 554/81, Regulation made under the *Education Act*, as amended;  
AND IN THE MATTER OF the minors born in 1985 and in 1983

BETWEEN

E. AND E. S.,

Appellants

- and -

THE CARLETON BOARD OF EDUCATION

Respondent

Tribunal Members:

Ken Weber	Chair
Eva Nichols	Member
Gary Dubinsky	Member

For the Appellants:

Mrs. E. S., Ms J. Rivington, Ms M. Bruce

For the Respondent:

Mr. R. Mills

The hearing was held in Ottawa, Ontario, on 4, 5, 6 January 1993.

## **The Appellants' Request**

FOR THE CHILD BORN IN 1983

That [the Tribunal] identify the child exceptional "to guarantee the child's right to an appropriate placement and support services to ensure the child is not further physically and emotionally harmed and educationally deprived" (Appellants' closing submission, p. 557).

## **The Respondent's Reply**

FOR THE CHILD BORN IN 1983

That the appeal be denied on the grounds that "there is no evidence that will allow [the Tribunal] to make the conclusion that the child is in need of a special education program" (Respondent's closing submission, p. 577).

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## **The Appellants' Request**

FOR THE CHILD BORN IN 1985

That "1. The child receive a proper identification [by the Tribunal] to include physical disability of environmental sensitivity; that is, a multihandicap designation: communication, behaviour and physical designation.

2. The child receive an appropriate placement with modifications made to meet [the child's] disability, that is, environmental sensitivity, and that appropriate support services be available to ensure consistency in programming, that is, a special education teaching assistant, and speech pathologist.
3. An appropriate statement of needs be drawn up, specific to the child's health and emotional needs.
4. An individual education plan be drawn up which includes:
  - (a) health needs, specifically: fresh air, natural light, uncarpeted facility, appropriate cleaning regime, appropriate transportation, full spectrum fluorescent lighting, precautions with respect to food and other identified allergies and sensitivities;
  - (b) educational needs, specifically: (i) appropriate integration (ii) structured learning environment to improve attention and listening skills (iii) accommodation for Scotopic Sensitivity Syndrome (iv) reading comprehension program (v) behaviour—based programming.
5. Specific goals and objectives be set in all educational areas with regular updating of goals

and objectives recorded in the individual education plan.

6. A system be set in place and a specific person appointed to coordinate this process and to ensure that all of the child's needs are met (Appellants' closing submission pp.551—3).

### **The Respondent's Reply**

That the evidence before the Tribunal is not sufficient to support a finding that the child's environmental hypersensitivities are interfering with the ability to learn.

That "the program [for the child] is working, [and] the appeal should be dismissed and the I.P.R.C. be confirmed. The child's program should be continued as it is" (Respondent's closing submission, pp. 561, 69, 70).

### **Chairman's Note:**

1. During the hearing, certain evidence regarding both students was heard more or less simultaneously, especially on such matters as environmental hypersensitivity, policies of the Carleton Board of Education, and general issues regarding interpretation of the *Education Act* and attendant regulations.

Also, certain witnesses testified in a general way on matters, which applied to both children.

To accommodate witnesses and to expedite the hearing, witnesses for both parties were heard out of order. That is to say, certain witnesses for the Respondent were heard before all the witnesses for the Appellant testified. This procedure was agreed to by both parties, and both parties were also assured the right of recall if they wished.

Summaries of testimony are nevertheless presented in the usual manner, with Appellant first, followed by Respondent. Also, the Appellant's requests for the two children along with Respondent's replies, are presented separately.

2. The Tribunal recognizes that subsequent to the hearing, Regulation 554/81, as amended, has been renumbered to Regulation 305. The decision rendered here will use the number 554/81.

**Witnesses :**

For the Appellant:

Dr. Gail Beck

Ms Molly Bruce

Dr. Edward Ellis

Mr. Terry Harkins

Mr. John Harrison

Dr. Bill James

Dr. Ross Mickelson

Mrs. E. S.

Ms Ruth Taber

For The Respondent:

Ms Ms. C.

Ms Margaret Cruikshank

Mr. Harry Gervais

Mr. Tim MacIntyre

Mr. John Morrell

Ms Sandra Redmond

Ms Judith Scott

**Summaries of Testimony:**

**For the Appellant:**

**DR. GAIL BECK**

Dr. Beck is a child psychiatrist who has been seeing the child born in 1983 since early 1992.

Dr. Beck states that her primary diagnosis for the child is an adjustment disorder of childhood based on stress. She states that in her opinion the cause of this stress to a large extent is the fact that “the child’s mother and the school are having a big fight.” (p.362) Dr. Beck confirms that she is aware of the child having been identified as environmentally sensitive, but states that her involvement with the child does not focus on this situation. Nevertheless, the child “at times describes a great deal of discomfort (to me) in the classroom, physical discomfort” (p.363)

Further, Dr. Beck comments that when new carpeting was laid in her office, the child was “severely affected” (p.363).

Dr. Beck goes on to state that “this kind of adversarial process is severely affecting this little child and the best thing this Tribunal could do for the child is help the parents and the School Board to find a compromise that will allow the child to be physically comfortable in school” (p.364), which in turn could help to remove the underlying source of the child’s emotional stress.

On cross-examination, Dr. Beck states that the child is “afraid in school of not being compliant for fear of causing yet another disagreement” (p.365). The child appears to feel that [the child] cannot say anything about physical discomfort at school. Dr. Beck responds that the child finds it really difficult when [the child] is not using the yellow paper and that some days the child arrives at the medical office with eyes “a little bit red” (p.367). In Dr. Beck’s opinion, the child “certainly knows what [the child] can and can’t do in terms of what would make [the child] comfortable or uncomfortable”. But the child is not “entirely comfortable about mentioning those needs” (p.370)

In response to a comment that the school had never heard about any of this, Dr. Beck states that she attempted to contact the school in December 1992, but they did not call her back.

In response to questions from the Tribunal, Dr. Beck states that “the child’s prognosis is really based on how much longer the stress continues to be present” (p.378). She explains that adjustment disorder does not necessarily have a negative impact on a child’s academic performance in school. She goes on to state that she cannot say “absolutely, that the elimination of something like the carpet would make the difference” (p.381) and resolve the problem at hand. The most important point in her view is for the parents and the school to resume direct dialogue and be prepared “to meet halfway and begin to be able to work around a child’s best needs” (p.382).

## **MOLLY BRUCE**

Molly Bruce testifies that she is a member of the Special Education Advisory Committee (SEAC) for the Carleton Board of Education (CBE), and that she has a long-time association with the Autistic Society.

Ms. Bruce states that as a member of the Appeal Board for the child born in 1985 she disagreed with the original Identification, Placement and Review Committee (IPRC) decisions regarding the child’s identification and placement, and states that the child is put at risk because medical evidence and educational assessments “identifying areas of need, i.e., poor eye contact, ritualistic or perseverative utterances, inconsistency in response: all consistent with symptoms also relating to environmental sensitivities” (p. 117) were ignored. She further testifies that consistent support service for the child is not available.

The witness states that, as a member of the Appeal Board for the child born in 1983, she disagreed with the original IPRC decision. Ms. Bruce testifies that it is “evident from the extensive documentation and evidence presented by the parent, that the child born in 1983 has a physical disability (p.120) and that “failure to provide an appropriate placement [for the child born in 1983] has been detrimental to the child’s physical and emotional well-being and the child’s learning ability” (p.121).

Molly Bruce states that she has extensive experience in the area of environmental sensitivities and the cerebral and physical effects these can have on people. She further asserts that she has personal experience with a pupil of the CBE for whom a clean air machine, a statement of needs, and an individual education plan are provided to accommodate the effects of environmental sensitivity.

This pupil is her son. The special accommodations are provided at the Carleton Separate Board through purchase of service by the CBE. The witness states that the pupil's health and physical accomplishments have improved since these accommodations were established.

In cross-examination, Ms Bruce acknowledges that she has not observed either of these children (the child born in 1983 or the child born in 1985) in their respective classrooms.

In answer to the Tribunal, Ms Bruce states that it is her experience that the IPRC process is the means by which special accommodations can be brought about for pupils with environmental hypersensitivity.

### **CARL EDWARD ELLIS**

Dr. Ellis' curriculum vitae states that he is a member of the Ottawa-Carleton Health Department. He testifies that he and members of the Department met with officials of the CBE , and discussed the case of both these children. Dr. Ellis testifies that his recommendation in that meeting is summarized in a letter from Dr. Gordon [of the Health Department] to the appellants, dated 9 April 1992. This letter suggests a "one year trial period of learning in a non-carpeted environment with assessment of school performance, attendance, and health would be a reasonable means of determining the effect of the carpeted environment on the school performance of children with a medical diagnosis of environmental hypersensitivity possibly exacerbated by carpeting" (p.341)

Dr. Ellis states that the "case definition for environmental sensitivity is still in question" (p.342) and that "whether carpeting causes problems in any particular child I cannot say, but this particular situation has been going on for a long time." The witness states that because there are letters from physicians suggesting the carpets may be a problem, he suggested removing carpets from the classrooms on a trial basis.

There were no questions in cross-examination.

In response to the Tribunal, Dr. Ellis replies that "certainly with conventional allergies if you remove the allergen the difference in symptoms is so dramatic that everyone quickly says: "There is a difference here" (p.349-50). Dr. Ellis further states that the Health Department to his knowledge has never used its powers under the *Health Protection and Promotion Act* to order the removal of a rug.

### **TERRY HARKINS**

Mr. Harkins is Superintendent of Education with the Renfrew County Board of Education and he chaired the appeal boards for both the children in September 1992.

On recalling the Appeal Board hearing for the children, Mr. Harkins agrees that the use of a court reporter is unusual. He states that the Appeal Board's decision to refer the case back to the IPRC was made in part because the members felt that it should not have been necessary to access help for an identified medical condition, which the Carleton Board recognizes as a medical condition and for which the Board in the past has provided the necessary accommodation for both students and staff, through

the IPRC process. In response to a question regarding how such a situation would be handled at the Renfrew County Board, he states that he believes that it would be addressed as a medical problem and, “if the contributing medical factor was removing the carpet, then (they) would make efforts to do that” (p.35)

However, in relation to the case in question, he states that the Appeal Board was not able to draw an absolute connection between the environmental sensitivity and [the child born in 1985’s] learning problems. Although they had a strong suspicion that there was such a connection, there was not enough “substantive information” (p.36) to connect the two medically. It was the Appeal Board’s hope that by sending it back to the IPRC there would be additional medical evidence available which would establish such a link, if it indeed exists in this case.

### **JOHN HARRISON**

Mr. Harrison served as a trustee with the Carleton Board of Education from November 1988 to the end of November 1991. He represented the area where the family resided.

Mr. Harrison explains that when he was a trustee, he did not fully understand the issues surrounding the children’s environmental sensitivities. However, he felt that “there were things that could be done that could have helped (your) child if there had been more opportunities for discussion” (p.246)

He confirms that he became aware that the carpeting was removed at Huntley Centennial School for a student with environmental sensitivities, but he was and still is not aware of the details of that case or whether the IPRC process was used to achieve the removal of the carpet. He comments that it was his impression as a trustee that the Carleton Board — trustees and administration — “tended to be fearful of things that might establish precedents and fearful of getting into areas that might snowball” (p.249). They therefore preferred to go only as far as “the law dictated” (p.249)

When questioned, Mr. Harrison confirms that the Carleton Board’s Special Education Advisory Committee had not, to the best of his knowledge, made any recommendations to the Board for policy amendments relating to environmentally sensitive children. He further confirms that his recollection is that at the Board meeting of June 25, 1990, the Board Chair stated that the Carleton Board would address the needs of environmentally sensitive children on a case by case basis (p.252)

### **DR. BILL JAMES**

Dr. James states that the appellants brought the child born in 1985 to him in June of 1990, primarily because of the child’s developmental delays in particular “very slow language skills”. The witness states that since first seeing the child, he has noticed a lot of changes. The child’s interactions have improved as have the child’s language skills.

According to the witness, the child has made marvellous progress. He credits this progress to the work of the child’s family and the school system. The witness states that environment has a profound affect on any child and that because of the child’s allergies, a carpeted classroom has some affect on the child. Dr. James is not one hundred percent certain that the child would not have improved if the child

was not living in a clean home and further states that he does not feel “well qualified” to answer a question on this point (p. 320). He testifies that children with specific or proven allergies may have a delay in learning because the allergies affect their well being and general health although he cannot make a specific link between any delay in the child’s learning and the carpeting in the classroom.

Dr. James states that even if the carpets were removed from the classroom, the child would still, in his view, have respiratory problems and allergies. “Even if we minimize the environmental factors affecting these children,” Dr. James believes “they will still have these problems” (pp. 329-330)

Dr. James states that whether a classroom has carpet, or pillows on tile or wooden floor, the carpets or pillows will have to be cleaned in a specialized cleaning regime (p. 338). Either way he testifies, children with allergies will still have a “problem” (pp. 329—330).

## **DR. ROSS MICKELSON**

(Dr. Mickelson was accepted as an expert witness in the area of environmental medicine. Mr. Mills requested that his evidence be accepted on a limited basis. This limitation was stated by Mr. Mills as follows: “My only concern is with the area of your expressing a direct opinion that the classroom environment affects the learning of either children” (p.200). The Chairman declined to limit Dr. Mickelson in this way and stated that Mr. Mills could cross examine him if he were to offer an opinion which caused the Board concern.)

Dr. Ross Mickelson is a physician whose practice is primarily in the field of environmental medicine. The two children have been Dr. Mickelson’s patients since May 1988.

Dr. Mickelson states that his diagnosis for both children is environmental hypersensitivity. This is accompanied for the child born in 1985 with a diagnosis of autism, inhalant allergy and seasonal rhinitis and for the child born in 1983 with eczema. He comments that following the home improvements in the family home he observed “more stable behaviour patterns for both children, improvement in the eczema in the case of the child born in 1983 and in the case of the child born in 1985 a very marked improvement in the child’s cognitive ability and the child’s interactive skills” (p.204). He elaborates that these improvements are quite remarkable in a child who has been diagnosed as having autism. He adds that in addition to the home improvements there have been other allergy treatments, which influenced these changes.

Dr. Mickelson elaborates on his beliefs that environmental sensitivities have a significant impact on the human brain, stating that “there is a real marked impairment often in terms of concentration, memory, basic skills involved in the learning process” (p.207). He further confirms that in his professional opinion, “if the children’s accommodations for their environmental sensitivities in their respective classrooms were appropriate, (then) their health and their ability to learn would be enhanced” (p.206).

He elaborates on the fact that this is a new and growing field of medicine and mentions the names of some of the experts in the field, including Drs. Rae, Ashford, Miller and Rapp. He concurs that Dr. Rapp’s linking of environmental hypersensitivities and autism may well apply to the child born in 1983 (p.209). He describes some of the obvious physical signs of environmental sensitivities, such as

asthma, rhinitis, flushed face, etc. as well as the behavioural signs, including fluctuating temperament, anger and temper tantrums. He describes the difference between the toxic exposure shown by the general population to a high dose of a particular contaminant and the hypersensitive reaction of those who have increased sensitivities to certain substances. He also explains the total load concept, which for people with environmental hypersensitivities is particularly critical. He states that of course, "each individual (has) a threshold or a homeostatic balance which their body is striving to maintain" (p.214). But for those who are environmentally hypersensitive, non allergic factors such as psychological, social or family stressors also contribute to the total load in a much more significant fashion (p.214).

Regarding the child born in 1983, Dr. Mickelson confirms that the child's headaches and irritability as reported by the mother are consistent with the child's environmental hypersensitivity, although there may well be other factors involved.

On cross examination by Mr. Mills, Dr. Mickelson states that he sees the child born in 1985 every one to two months in his office, but that he has not observed the child or the child's behaviour in the classroom setting. His knowledge of the child's behaviour and cognitive functioning is based on his observations in the medical office and on the mother's descriptions. He states that brain function is "certainly physiological, that in and of itself is an indication of how the body is functioning. There may or may not be other more objective measures" (p.221). He confirms that there has been a marked improvement in the child and that he believes that these improvements are due to a number of factors, which include but may not be restricted to the home improvements, other interventions by various health supports, the child's school programme, in fact, a number of factors. He comments that "to the extent that school environments are for learning, .. it is really important that as much as possible that environment be as conducive to learning as possible" (p.224).

He states that it is rather difficult to state for any child, but especially one that is identified as having autism, that the child has now reached an adequate level of functioning. He feels that neither teachers or doctors can predict how far the child can go or to what extent the child's progress will be affected by the child's "adverse reaction to things in the child's environment" (p.224).

Regarding the child born in 1983, Dr. Mickelson states that the child's symptoms include in addition to eczema allergic rhinitis, behavioural problems, abdominal discomfort. He goes on to confirm that "to the extent that the child's environment contains substances to which the child is reacting, the child's (school) performance would improve if those substances weren't there" (p.229) . He confirms that his knowledge of the child's behaviour is based on his observations in his office and the mother's reports and these include "irritability, outbursts of crying, sadness and depression" (p.230).

In response to the questions posed by the members of the tribunal, Dr. Mickelson again affirms the multifactorial nature of the etiology of environmental hypersensitivity. He confirms that he has not visited the children's classrooms and therefore cannot comment on the presence of specific environmental factors being present in either location. He cannot state what the direct stressor is in the school setting for either one and is not at all sure that it is ever possible to identify absolutely, because of the total load concept. He confirms that in the case of another student with environmental sensitivities in whose classroom the carpet was removed there were significant improvements both medically and behaviourally.

## **MRS. E. S., the mother**

The mother strongly believes that her children belong in a school although home instruction has been suggested to her by various members of the Board. In fact she testifies that the Board has threatened her with home instruction on a number of occasions.

She states that she has met the “proverbial brick wall” at the Board and school and testifies that she has been told by Board officials that they will fight her “as long and as hard as possible on the carpet issue” (p. 386).

In response to cross-examination by Mr. Mills, the mother testifies that she is happy with the educational program the child born in 1985 is receiving but states that the child could do better if the Board appropriately addressed the child’s environmental needs. She states that the child has untapped potential and that the child’s progress is largely attributable to the changes in the home environment. The witness also testifies that she would like better communication with the school with respect to her children’s academic progress. She states that the Board’s refusal to accept the medical evidence presented by her and her experts with respect to her children’s environmental sensitivities constitutes harassment. However, in response to questions from Mr. Mills, the mother acknowledges that Mr. MacIntyre has tried to respond to her requests for the child born in 1985 but has received little cooperation from the Board. She also acknowledges that the abuse she alleges stems from the disagreement between herself and the Board regarding the provision of services for the children’s needs and believes the Board has deliberately gone out of its way to inflict abuse (p. 398). The witness also acknowledges that she did in fact overrule the child born in 1983’s wishes to take drama class in the portable because she feels it is her duty as a parent to protect her child’s health (p. 415).

The mother agrees that the main issue is the carpeted classroom and believes the Board does not want to set a precedent by removing the carpet for the child born in 1985.

In response to a series of questions from Mr. Mills, the mother testifies that the Board has responded in some way to the requests made by her with respect to the child born in 1985’s needs including the following:

- (1) installation of a different lighting system,
- (2) modifications in the cleaning regime,
- (3) alerting special education teachers and therapists to the importance of avoiding freshly laundered dry cleaned clothing and the use of scented toiletries,
- (4) transportation of the child to and from school in a clean non-diesel, non smoke free vehicle free of scented products,
- (5) a structured learning environment,

- (6) integration of the child with the child's peers to develop the child's social and communication skills,
- (7) a program to improve the child's gross motor and skills self help,
- (8) accommodation of the child's scotopic sensitivity,
- (9) a program of behavioural modification to develop more fully the child's group participation skills.

Notwithstanding this acknowledged progress, the mother believes there has to be a more coordinated effort between home and school to address the child's needs (p. 408).

The mother states that she wants the Tribunal to give some credence to the letter written by Tony Silipo (the former Minister of Education) regarding environmental sensitivity and the possibility that this letter amounts to a policy change (p. 410). She also states that because of the Board's policy regarding environmental sensitivities, the child born in 1985 is unable to reach [the child's] full potential (p. 412).

#### **MR. MACINTYRE ON REDIRECT BY MR. MILLS**

In response to the testimony given by the mother, Mr. MacIntyre chose to respond to two items:

- (1) The allegation that the communication between the home and school is inadequate and
- (2) that he disregarded [the child born in 1985's] needs when the child's classroom was moved this year.

In both of the above cases, Mr. MacIntyre gave examples of the communication between the school and the family and the factors he took into consideration to ensure the child's needs were met when the classroom was moved this year.

#### **RUTH TABER**

Ruth Taber is currently on a special assignment with the Ministry of Education in Toronto, but was Superintendent, Special Education with the Regional Office of the Ministry of Education for Eastern Ontario in Ottawa.

Ms Taber states that she recalls attending a meeting between the Carleton Board of Education and the Allergy and Environmental Health Association, in February 1991, at which there was some agreement about how the Board will handle children with environmental sensitivities. Ms Taber, however, does not recall the details (p.4).

Regarding the child born in 1985's IPRC determination, Ms Taber does not offer any specific opinion but states that she encouraged the mother to "work with the school personnel and the Board

personnel to try and come up with a solution that would meet the needs of both of her children.” (p.10).

She states that “Carleton does have policies and procedures that would allow the Board to meet the needs of both children” (p.10). Ms. Taber states that current Ministry of Education policy does not include environmental sensitivities, as an exceptionality, although she is aware that in some Boards environmental sensitivity has been used as the basis for identifying a physical exceptionality.

She confirms that it is in order to include a health assessment as part of the identification of the needs of exceptional pupils. Similarly, she states that it is the intent of Regulation 554/81 to allow the needs statement to include identified support services and appropriate accommodation.

On cross examination Ms Taber states that the Ministry of Education has not established threshold levels for contaminants in the environment and therefore the Carleton Board would have no specific guidelines at this time in this field.

In response to a question from the Tribunal, Ms Taber confirms that in her experience it is acceptable to have exceptional pupils identified as having several exceptionalities, as distinct from the multihandicap category.

#### **For the Respondent:**

##### **Ms. C.**

Ms. C. is the grade four teacher at Barrhaven Public School and has been [the child born in 1983's] teacher since September 1992.

Ms. C. describes the child as a child with a very cheerful demeanour, who bubbles with enthusiasm, participates frequently and well in class and who is open and approachable towards everyone with whom [the child] comes into contact. The child has many friends and appears to be settled and happy in the grade four class (pp.495-6).

The class has twenty-five children in it and in addition there are five special education pupils who are integrated into this class on a part time basis. The child's placement within the classroom is as the mother has requested it.

Ms. C. observes that the child appears to be a very healthy child, with none of the physical symptoms which the book on environmental sensitivities loaned to her by the mother described. She has seen no puffiness of eyes, coughing, sneezing or wheezing. The child is observed to have a high energy level which translates into excellent school work at all times (p.497).

On recalling a parent teacher interview last fall, Ms. C. describes an incident where the child stated to her, the mother and Ms Redmond the fact that [the child] really enjoyed drama class and its location in a portable did not have a negative impact on [the child]. In spite of this, the mother insisted that the child was not to go to drama if that meant a visit to a portable.

On cross examination Ms. C. confirms that she has read the materials provided to her by the mother as well as the child's O.S.R. file but that frankly she "couldn't find the child [in question] in that literature, in those books" (p.502).

When she was questioned about the fact that the child that she described did not appear to match the descriptions offered by some other witnesses, Ms. C. feels that she cannot really comment on that observation. She does describe two incidents when she has observed the child born in 1985 as frustrated or upset, which relate to "the child's tendency to perfectionism" (p.505) and the child's relationship with the mother. She goes on to state that if the child is "terribly unhappy at school then the child is a better actress than most of the people in the drama class that the child is not attending because the child certainly comes across as someone who really is happy with [the child's]self" (p.506).

She confirms that while perhaps the child benefits from frequent breaks or rest periods, these are readily available without any particular disruption of the school programme and therefore, she does not see these as particularly important (p.507).

## **MC**

The witness is presently the child born in 1985's teacher and states that she was also the child's teacher for the 1991/92 school year. She states that her classroom is carpeted and is located in the old section of the school known as the primary wing (pod). The classroom door has a half window adjacent to the hallway.

M.C. testifies that when the child entered her class in September of 1991, the child had some behavioural difficulties. She states that in the year and a half she has known the child, the child has made great academic progress and continues to respond well to the behavioural management techniques and structured learning environment she provides. As a result, the child's behavioural impulses and aggressive behaviour have also improved. M.C. states that it is a program objective to gradually integrate the child into a grade two program. Since she has known the child, M.C. has not noticed any significant change in the child's health or any evidence of the child's environmental sensitivities.

M.C. states that she is concerned about having the carpet removed from her classroom. She finds having a carpet reduces the noise level and, in her view, provides a better learning environment for students like the children who are easily distractible. The witness also states that she is unable to draw a cause and effect between the child's environmental sensitivities and the child's ability to learn, although she acknowledges, that dealing with a student's environmental sensitivities is part of the educational package. It is only when the child's routine is changed that she notices an increase in the child's hyperactivity and irritability.

## **HARRY GERVAIS**

Mr. Gervais is the principal of Special Services with the Carleton Board of Education. He has held that position for the past two years. In that capacity he is responsible for co-ordinating the IPRC process

for the Carleton Board of Education as well for supervising members of the Special Services Department. As part of the IPRC process, Mr. Gervais chairs the IPRC meetings.

**Regarding the child born in 1985:**

Mr. Gervais states that he first became aware of the family when the mother requested an additional IPRC to identify the child as an exceptional pupil on the basis of environmental sensitivities and scotopic sensitivity syndrome. The meeting was held on February 10, 1992. Mr. Gervais states that the Committee considered all the information presented to it, including the medical evidence from Drs. Mickelson and James. (subsequently this statement was amended to include a letter from Dr. Molot)

Educational information was presented by Judith Scott, MC and Tim MacIntyre. Mr. Gervais states that the Committee also looked at some reports on the modifications carried out at John Young School to accommodate the child's needs.

On the basis of all of this information, the IPRC reaffirmed the child's previous exceptionalities and placement.

Mr. Gervais explains that this was due to two distinct things. Firstly, the fact that the child is doing really well in the current placement and secondly, that "the difficulty was establishing the link between the child's obvious learning problems at school and environmental hypersensitivity" (p.155). Mr. Gervais continues that "the link was not made on the basis of the medical evidence that was presented by the two doctors" (p.155).

Mr. Gervais comments that the IPRC did in no way deny the fact of the child's environmental hypersensitivity, but it viewed it as a purely medical condition. He explains that when modifications are required for obviously medical conditions, very often the process is outside the IPRC structure, e.g. for a student who uses a wheelchair.

Mr. Gervais states that "the issue of physical modifications to the child's classroom to the school was more of a human rights issue in many respects" (p.157). Further, that the IPRC could not accept the educational recommendation contained in the physicians' letters regarding the removal of the carpet.

On cross examination, Mr. Gervais explains that the child's current exceptionality represents a "dual diagnosis" (p.163) and that the reason why the IPRC needs statement only contains three needs, regardless how many were discussed at the meeting, because the computer is only able to print out the first three (p.163).

Mr. Gervais explains that there could be a connection between the child's environmental hypersensitivity and the child's inattention and behaviour. But, he elaborates, "that wasn't really the issue at the IPRC, whether or not the medical condition caused the inattention" (p.165).

He acknowledges that under certain circumstances an environmental sensitivity would be considered a physical disability, but that does not mean that it needs to be identified as an exceptionality. He is aware, he states, that such determination has been made by other school boards. He agrees that the

environmental hypersensitivity “may affect the child’s learning” (p.176), but that does not justify the removal of the carpet. Mr. Gervais does stress again that parents have a mechanism outside of the IPRC process to get needed physical modifications within a school for their children. In response to a question about the decision at another school within this Board to remove the carpet for an environmentally sensitive student, he states that he doesn’t know whether the IPRC process or some alternative process was used to achieve this outcome.

**Regarding the child born in 1983:**

Mr. Gervais confirms that the IPRC for the child born in 1983 was held on the same day as for the other child and that it considered the child born in 1983’s environmental hypersensitivity, scotopic sensitivity as well as the child’s educational progress. The IPRC did not find that the child born in 1983 is an exceptional student. In the meantime, Mr. Gervais states a number of modifications have been made at Barrhaven School to accommodate the child’s medical needs.

**TIM MACINTYRE**

Tim MacIntyre is the principal at John Young Elementary School and is in his fifth year at the school. Mr. MacIntyre testified with the aid of notes he prepared two weeks before the hearing to refresh his memory concerning events that took place from April of 1990 to the present.

Mr. MacIntyre states that he has always tried to accommodate the needs of the child born in 1985 through the requests made by the mother. As an example of his desire to ensure that the needs of the child were met, Mr. MacIntyre cites his willingness to override the recommendation of his staff at the IPRC in March of 1991 by placing the child in the primary language class for the 1991/92 school year where the child would receive more intensive speech and language support rather than the primary needs class which was the initial recommendation. The child has been identified as a student who has communication and behavioural exceptionalities. It is also noted that the child has autistic like behaviours.

Mr. MacIntyre states that although integration still remains a challenge for the child, the child’s behaviour has improved and according to tests performed in December of 1992, the progress the child has made in developing language communication skills is impressive.

The witness testifies that despite the child’s environmental sensitivities, the child appears normal in terms of [the child’s] physical well being and [the child’s] health does not seem to interfere with the child’s participation in classroom activities. In comparing the child’s attendance and absences with others, Mr. MacIntyre states that they “are not out of the ordinary in terms of either duration or frequency” (p. 67).

In an attempt to address concerns raised by the mother concerning the child’s environmental sensitivities, Mr. MacIntyre states that he has assessed the heating and ventilation system in those parts of the school where the child has classes, installed full spectrum lighting, and a door with a window in the classroom, upgraded the vacuum cleaners, hired a consultant to test for various allergens, fungi and moulds and put in a request for a skylight. To further underline the fact that he has

tried to ensure that the child's needs were met, the witness points out that food provided by the mother for the child is stored in the school freezer, the child is discouraged by the school staff from using the school fountain and uses an Irlen filter for reading. The child also uses coloured paper and water based colour markers for some of [the child's] activities. As well, all the staff are made aware of the child's sensitivities to fragrances in personal hygiene products. The witness stresses that in any move contemplated, he has also tried to ensure that there is a space available for use by a speech pathologist adjacent to the child's classroom.

Notwithstanding the health issue, Mr. MacIntyre's views are that carpets better lend themselves to the kinds of teaching strategies used today rather than bare cold tile floors or a facsimile. The witness states that he is "fundamentally and philosophically opposed" (p. 92) to removing carpets from classrooms to accommodate the needs of a student like the child who has environmental sensitivities because such a decision may impinge on the rights of other students who function better in a carpeted classroom. Mr. MacIntyre states that decisions to remove carpets in a classroom must be made in the context of the needs of the school population at large.

Mr. MacIntyre testifies that carpeted classrooms are more comfortable for students. They are also easier to clean and keep the noise level down. This he points out is especially important when dealing with a pupil who has an attention deficit disorder (ADD). The witness sees no linkage between a carpeted classroom and the health of the child.

## **JOHN MORRELL**

**[Chairman's Note:** The testimony of Mr. Morrell is accompanied by extensive technical detail, which is not summarized in this document. Reference is made to Exhibits R-9 and R-10: Chronology of Testing and Modifications, Physical Environment dated 1992 (for Barrhaven Public School and John Young Public School respectively).]

John Morrell testifies that he is employed by the CBE as Coordinator of Safety, Health and Security. Mr. Morrell states that extensive testing of Barrhaven and John Young Schools, particularly the classrooms of the two children has been carried out "to try and find a link between...symptoms described by the children's physician and some of what we thought we might be able to find in either of the schools in which the children were located" (p. 512).

According to the witness, if there is mould or other biological activity in the two schools, it is too low to have a significant effect on the occupants, and that although the levels at which some students may be sensitive is not known, the levels in these specific classrooms are lower than what could be expected to be found, normally, in activities in and around the school and in homes.

Mr. Morrell testifies that tests comparing carpeted and hard-surfaced floors found that "virtually the same genera of moulds and fungi grow in each although in the carpeted floor they are captive by the fabric and are not as easily dispersed" (p.522).

The tests also revealed that in rooms with hard-surfaced floors "the mere movement and activity of people in the room would cause the moulds and fungi that grew on the floor to stratify at the breathing

zone of children in the room much more easily than it did in the carpeted room” (Ibid.).

Mr. Morrell also states that the cleaning/housekeeping regimens at the two schools are constantly being modified in favour of the type that the mother recommends as desirable and appropriate (See Exhibit R-11).

The witness testifies that in both schools the testing revealed certain environmental deficiencies particularly as a consequence of inadequacies in air circulation and that these deficiencies were corrected. He testifies that this type of remediation and correction represents how the CBE attends to possible environmental problems.

In cross-examination, Mr. Morrell replies that the environment in school buildings generally reflects the environment at large, in that schools can quite possibly contain elements that are found in all buildings, but these elements are not necessarily present in measurable quantities. Moreover it is difficult to establish that schools particularly are a problem [for environmentally hypersensitive persons] because “medical practitioners have identified moulds that are in the outdoors in quantities three, four, ten and one hundred times greater than we have inside our schools” (p.520).

#### **MS. SANDRA REDMOND**

Ms Redmond is the principal of Carleton Public School and concluded her fourth year at the end of January 1993. She has been the principal since the child born in 1983 arrived at the school. Prior to becoming a principal, Ms Redmond was a teacher. She has been an educator for twenty-three years, has taught a variety of children and held a variety of positions during this period, including the teaching of learning disabled and gifted children. She is also a specialist in special education. Ms Redmond states that the child born in 1983’s classroom is located in the west wing (Porta-pak portion) of the school. The child is presently in the grade four English Program.

Ms Redmond testifies that “it is a delight to work with a child of this child’s attitude” (p. 459) and states that since the junior kindergarten year, the child has been achieving at an average to above-average level and received the Junior Achievement Award for the first term of the year 1992-93.

Ms Redmond states that the child born in 1983 can best be described as a pupil who enjoys school and completes assignments promptly and efficiently. The child has high standards for achievement and is unerringly on task. The child participates generously and [the child’s] contributions enhance the learning atmosphere of the classroom” (p. 464).

In her own personal observations over the four years she has known and observed the child born in 1983, Ms Redmond states that she has not seen any symptoms of environmental sensitivities (p. 467). She also testifies that the child’s absences from school are not abnormal when compared with the rest of the school population.

Ms Redmond testifies that the mother overruled the child’s wishes to attend drama class in a portable. In response to the mother’s assertions that there has been a lack of communication and cooperation with the school, Ms Redmond cites examples of how school personnel have responded to the mother’s requests regarding the child’s needs and maintained open communication with the family.

She also confirms that all the testing of the child took place in a room that was carpeted and has no window. Like Mr. MacIntyre, the witness, as an educator, also expresses her preference for carpeted rather than non-carpeted classrooms.

In her testimony, Ms Redmond describes the gifted screening and identification procedures of the Carleton Board of Education and testifies that after a thorough testing, the child born in 1983 was determined to be a bright but not a gifted pupil (pp. 473-74). She also states that there have been ongoing discussions with school personnel to address the child's environmental needs especially with respect to the child's need for natural lighting and to be in a classroom where there is no chalk dust.

## **JUDITH SCOTT**

Ms Scott is a speech/language pathologist with the Carleton Board of Education. Her job is to provide support to the language classes operated by the Board, including the class at John Young Public School. She has known and worked with the child born in 1985 since September 1991.

Ms Scott states that she initially used the assessment carried by another (unnamed) speech pathologist, which, without applying any specific diagnostic label to the child's condition, identified the child's language and communication behaviours as autistic-like. This was demonstrated by the child's difficulties with understanding and using meaningful language and the child's deficits in social language skills.

In the 1991/92 school year the child's classroom was in the porta-pak section of John Young School, but Ms Scott states that most of her work with the child was carried out in a room called the meeting room which is in the main body of the school and is a windowless, carpeted room with regular fluorescent lighting. The classroom had ten pupils in it with one teacher, a teaching assistant and Ms Scott on a regular but not full time basis.

Ms Scott states that initially she worked with the child on a one on one basis, but after a while it was found helpful to include another student, so that there could be better opportunities for the child to work on [the child's] social language behaviours.

The child was making excellent gains in this programme and by the end of the school year "on most measures of comprehension the child was coming up into the average level" (p.263).

Ms Scott describes that as a result of these gains, in the current school year much of her work with the child is to support the child in achieving a greater level of integration. She accompanies the child into the integrated class setting and provides the necessary support. In this setting the child exhibits some of the "perseverative behaviours and occasional outbursts" (p.269) and it continues to be clear that the child has trouble managing change.

Ms Scott reports that on the various tests that she has administered in the early part of the 1992/93 school year, the child has improved significantly and in fact functions predominantly within the normal range. She refers positively to the child's gains in the use of social language, for which there are no objective measures at this time.

Ms Scott describes that in her weekly time allocation she spends approximately one hour per week with the child in a one on one situation, but in addition works with the child in a variety of group settings on a regular basis.

In describing the child's physical appearance, Ms Scott talks of a typical seven year old with no unusual physical characteristics, other than a "little bit of eczema" (p.271).

She comments also that as far as the child's behaviours go, some of them are not those of a typical seven year old. In cross-examination she describes some of these behaviours, especially as they relate to the child's interaction with the other students. She states that integration remains a challenge for the child who "still prefers the small group setting" (p.272).

Ms Scott recounts that this last term the child has received very little individual therapy and concurs that the child would benefit from having a teaching assistant available to give [the child] more help in the integrated setting.

### **The Closing Submission of the Appellants:**

#### **Regarding the child born in 1985:**

The mother quotes Section 8(2) of the *Education Act* regarding the duties of the Minister in respect of exceptional pupils, Regulation 554/81, Section 3(a) and the letter dated October 8, 1992 from the then Minister of Education, the Hon. Tony Silipo, to confirm the duty of the IPRC to consider the health needs of a pupil as presented by the parents and the medical practitioner. She asserts that the IPRC held for the child on April 5, 1990, June 22, 1990, March 19, 1991 and February 10, 1992 failed to determine that the child has a physical exceptionality on the grounds of having environmental hypersensitivity and therefore they failed in their legislated duty to the child.

She goes on to state that the reasoning for this decision is because "the Carleton Board of Education, as educators, do not feel that there is a direct link between this physical disability and learning" (p.549).

She goes on to quote some of the medical experts who appeared before the Tribunal in relation to the effects of environmental sensitivity on the brain and on learning. She further quotes from a study commissioned by the Carleton Board which states "Hypersensitivity can affect a child's learning ability and some school environments can also aggravate hypersensitive children. Allergies and sensitivities have been linked to behavioural problems and classroom disruptions for some time" (p.550).

She concludes by reiterating the remedies sought and which were a part of her opening statement.

#### **Regarding the child born in 1983:**

The mother states that the Carleton Board agreed that the child born in 1985 has environmental hypersensitivity, that this condition is a physical disability and that the Carleton Board has no specific policy or procedure in place, outside of the IPRC process, to have pupil needs identified and

accommodated. She reviews the specific accommodations that she has been seeking to meet the child's needs and the negative impacts that she feels have been the child's lot as a result of not having received the appropriate accommodations. She states that the emotional problems presented by Dr. Beck are to a large extent due to this situation. She concludes by reiterating that the remedy sought is that which she outlined in her opening statement on behalf of the child born in 1983.

### **Closing Submission by Mr. Mills:**

With respect to the child born in 1985, Mr. Mills submits that "a great deal of the evidence has crossed the line" and in fact bears on other issues: particularly what may or may not take place at the Human Rights Commission. Mr. Mills expresses concern that the Tribunal might accept "a great deal of this evidence and fashion a remedy which may or may not lead to another remedy or conflict or overlap with the mandate of the Human Rights Commission. Mr. Mills asks the Tribunal to "very carefully consider your statutory mandate in terms of fashioning your remedy ..." (p. 558).

Mr. Mills submits that the issue here is really whether environmental sensitivities so dramatically affect the ability of the children to learn that they should be declared exceptional (p. 559).

Mr. Mills submits that the Board has properly identified and placed the child born in 1985 and that the child's program is successful. In support of this submission he cites the testimony of Dr. James who referred to the marvellous progress the child had made saying that "it exceeds my expectations" (p. 569). Mr. Mills pointed to the testimony of Dr. Mickelson whom Mr. Mills submits was "absolutely amazed at the child's progress" (p. 556).

Mr. Mills submits that on cross-examination, the mother acknowledged that the school program is producing positive results. In fact, he states that the mother is happy with the program but wants some modifications by changing the school's physical environment. Mr. Mills states that the mother's objective is to accomplish these modifications through a change in the present identification of the child to that of a pupil with multi handicap exceptionalities. In referring to the definition of multi handicap in the Special Education Information Handbook (1984), Mr. Mills submits that there must be sufficient evidence to show a connection between the handicap and the ability to learn. Mr. Mills states that the evidence before the Tribunal is insufficient to support a finding that the child's environmental sensitivities are affecting the child's ability to learn (p. 561). In fact, Mr. Mills states that the hard evidence, the test scores, and the evidence of the teachers, suggest that given the child's developmental delays, the child is making remarkable progress (p.562).

Mr. Mills reviewed and summarized the evidence of Marg Cruikshank, Tim MacIntyre and Judith Scott to illustrate the fact that the school program has greatly benefited the child in the areas of the child's communication and behavioural exceptionalities.

Mr. Mills submits that the evidence does not support the view that the child's health or environmental sensitivities interfere with the child's ability to learn but rather points to the conclusion that the child's physical demeanour, health, appearance and attendance at school seem normal for a child [the child's] age. The only time the child becomes irritable or hyperactive or exhibits any form of behavioural disorder is when the child's routine is changed. In fact, Mr. Mills points out that the

evidence shows that the child does not exhibit the psychological or physical symptoms that Dr. Mickelson suggests should exist if the child is reacting to [the child's] environment (p.564).

Mr. Mills reiterated the fact that both Dr. Mickelson and Dr. James were impressed with the child's progress and that neither had observed the child in the learning environment. He also noted that both doctors were unable to make any specific connection between anything in the child's classroom or school and the child's ability to learn. Mr. Mills submits that the medical evidence does not support the mother's contention that the Tribunal should find that the "environment is causing a medical condition to become a handicap" in the child's case or that it is preventing the child from reaching [the child's] full potential (pp. 569-70).

With respect to the child born in 1983, Mr. Mills submits that the test results do not support the mother's contention that the child is exceptional (gifted) and therefore requires a special education program. Mr. Mills points the Tribunal to the statement of the then Minister of Education, Mr. Tony Silipo in his letter of October 8, which states that "not all pupils with environmental sensitivity are identified as exceptional pupils". Mr. Mills believes this best illustrates the facts in this particular case. Mr. Mills also contends that this Tribunal "has no jurisdiction to make any orders with respect to any modification of the school environment through the IPRC process" (p. 571-72).

In closing Mr. Mills asks the Tribunal to dismiss the decision of the Appeal Board that the child born in 1983 is in need of a special education program and uphold the finding of the IPRC in this regard and to uphold the decision of the Appeal with respect to the identification and placement of the child born in 1985.

**Decision:**

**re THE CHILD BORN IN 1983**

The Tribunal unanimously denies the request that the child born in 1983 be identified 'exceptional' and affirms the decision of the original IPRC.

**Basis for Decision:**

The principal issue in the appeal regarding the child born in 1983's possible identification as 'exceptional', is whether or not the child's apparent sensitivity to environmental conditions significantly interferes with the child's ability to learn or the child's capacity to function in school. In its examination of the appellants' case, the Tribunal is unable to find any convincing evidence that the child is so affected.

We give no opinion on whether or not the child born in 1983 is environmentally hypersensitive, and accept the evidence of the mother and of Dr. Mickelson that indeed [the child] is. However, both witnesses gave the Tribunal only general information about the syndrome and its possible effects on the child. They did not establish any connection between physical elements of the child's school environment and the child's school performance.

Dr. Mickelson testifies that individuals with environmental hypersensitivity will function "at a better

level” (p. 227) if substances to which they are having reactions are removed. However, he also testifies that behaviours presented by the child, which he feels may arise from environmental hypersensitivity, are those that he has either observed in his office or were reported to him by the mother. He has not observed the child in the classroom. Dr. Mickelson also acknowledges that the behaviours may arise from causes other than environmental hypersensitivity.

With regard to the mother’s testimony, the Tribunal notes that she presents evidence supporting a diagnosis of environmental hypersensitivity, but again we were not given clear evidence that the syndrome is affecting the child’s ability to learn in any significant way. (We note in Exhibit A-2, the pictures of the child about which the mother testifies that the child was physically affected by a rug installation in Barrhaven School. This installation was not carried out in the child’s classroom, and while the timing of the installation may well have been inappropriate for the child, it is not a regular occurrence.)

Finally, we note the evidence of Dr. Gail Beck, who is in a position to observe the child born in 1983 closely. While the Tribunal regrets that according to Dr. Beck, the child is considerably distressed by what the child perceives as [the child’s] role in the adversarial situation between the child’s parents and the school, and although it is our hope that in the child’s best interests, both parties will make every effort to reduce and eliminate this adversarial context, we are unable to draw any evidence from Dr. Beck’s testimony that the child should be declared exceptional owing to environmental hypersensitivity.

On the other hand, the Tribunal was presented with considerable, specific evidence, both in testimony and in exhibits, of the child born in 1985’s excellent academic progress, and with testimony that the child is well-accepted socially by the child’s peers. We note, particularly in the evidence of Sandra Redmond and Ms. C., who together are in a position to observe and evaluate the child’s school performance on a daily basis, that the child enjoys school, is comfortable there, and conducts [the child’s]self in an exemplary manner both academically and socially. The Tribunal concludes therefore, that the child born in 1983, although the child may have environmental hypersensitivity along with other possible health-related conditions, is not in any way an exceptional student within the current terms of the *Education Act*.

**Tribunal’s Note:**

1. Although the Tribunal has denied this appeal with regard to the child born in 1983, we wish to note that environmental hypersensitivity may indeed be a condition that can affect certain pupils in a significant way, and should therefore be considered as a matter of course by an IPRC, if medical evidence confirms it is a factor in a pupil’s case.
2. We have been given evidence that the child born in 1983’s environmental hypersensitivity is a dynamic condition, which may vary in intensity and presentation. The issue of Scotopic Sensitivity Syndrome (SSS) in the child’s case is also moot. Although to date, research evidence regarding SSS is equivocal at best, it is apparent to the Tribunal that at least for the present, the child seems to benefit from using some of the Irlen devices and techniques recommended as a means of countering the effects of SSS.

Taken together, these factors suggest that health-related matters in this child's case need to be monitored. While we are not making an order on this matter, the Tribunal does endorse those actions of the CBE, particularly the principal and staff of Barrhaven School, which attempt to ameliorate conditions for the child, (such as cooperating in the use of the Irlen devices provided by the mother). It is our hope that both parties will continue to recognize that cooperation of this nature is certainly in the child's best interests.

**Decision:**

**re THE CHILD BORN IN 1985**

re #1. The Tribunal unanimously denies the request that the child born in 1985 be identified 'multihandicapped' with the specific designations 'communication', 'behavioural' and 'physical', and affirms the decision of the original IPRC. (We note that the child is already identified 'exceptional' with 'communication' and 'behavioural' designations.)

**Basis for Decision:**

As with the case of the child born in 1983, the principal issue regarding the child born in 1985 is whether or not the child's environmental hypersensitivity interferes with the child's ability to learn or capacity to function in school. In its examination of the appellants' case, the Tribunal is unable to find any evidence that the child is so affected.

We give no opinion on whether or not the child is environmentally hypersensitive and accept the evidence of the mother and of Drs. Mickelson and James that indeed the child is. However, these witnesses do not establish a connection between the child's current school performance and the child's physical school environment.

The mother testifies "I feel that given the child's progress, that, in my mind, there is a definite link between the child's learning and attention and behaviour, and the [school] environment" and that this link must be "addressed in order for the child to develop to the child's best potential" (p.407). However, the Tribunal is given no evidence by the witness that such a definite link exists. The mother also acknowledges that, although she feels the child has untapped potential, she is pleased with the child's progress.

Dr. Mickelson expresses amazement (sic) at the child's progress in school, and states that a couple of years ago he thought it unlikely that the child would improve but realizes now he was wrong in this analysis. The Tribunal notes that Dr. Mickelson does not connect the child's improvement solely to the physical modifications made to the family home, as is implied by the mother, but to a multiplicity of factors, including the child's program at school. This witness also acknowledges that he has no first hand observations of the child in school and that he has no objective measures of the child's cognitive functioning; instead he relies on what he is told by the mother and what he observes in his office.

Dr. James notes marvellous progress (sic) in the child, for which he gives credit to the mother and the

family, and to John Young School and the personnel there. Further, Dr. James is unwilling to suggest there is a direct link between specific elements of the child's environment, such as the presence of a carpet, and the child's learning and behaviour style. In fact, when presented with the hypothesis that if the environmental variable were to be controlled in the child's case, would the child still be experiencing learning difficulties, Dr. James replies "...there is no question that this youngster this is not the cause of the child's learning or I use in quotation marks 'autistic tendencies'\_this is not the cause for it. The child still would have learning problems. The child still would have some degree of allergy problems, respiratory problems no matter what we do" (p.329).

This testimony of two expert medical witnesses, appearing for the appellants, makes clear to the Tribunal that no direct link between the child's physical school environment and the child's behaviour and learning style is established. Our conclusion is reinforced by the evidence of the child's present teacher, Margaret Cruickshank, who is able to observe the child in school on a daily basis, and testifies that she does not see any of the physical symptoms in the child that Dr. Mickelson attests may show up in a person who is environmentally hypersensitive. She acknowledges that she does see hyperactivity in the child from time to time, behaviour which could be interpreted as allergenically-based, but points out that this behaviour, when it appears, does so consistently at times of change in activity. This observation is independently confirmed by Judith Scott, the speech and language pathologist who is also in a position to observe and evaluate the child's behaviour and learning style on a regular basis. The Tribunal notes that hyperactive behaviour at times of activity-change is consistent with what Dr. James reluctantly describes as "autistic-like tendencies".

Margaret Cruickshank and Judith Scott, along with Tim MacIntyre testify to significant improvement in the child's schoolwork, and an expansion of the child's ability to communicate, as well as a steady increase in spontaneous social interaction and self-control of the child's behaviour. In fact, the child has progressed sufficiently to integrate into some regular classes in John Young School (which the mother, with some reservations, endorses). The Tribunal concludes that adding 'physical' to the child's identification is not supportable by the evidence presented.

## **Decision**

**re #s 2, 4, 5, 6.** The Tribunal unanimously denies the requests. (However, this denial does not constitute an order that the child born in 1985's *present* identification, placement and program be discontinued.) We affirm the decision of the original IPRC, and endorse the child born in 1985's program at John Young School, along with the continuing efforts by the CBE to modify conditions for the child's benefit.

## **Basis for Decision:**

It is the opinion of the Tribunal, based particularly on evidence from Tim MacIntyre, Judith Scott, and M C, who attest to the considerable academic, social and communication progress made by the child born in 1985, acknowledged with reservation by the mother, that the child's present placement and program are appropriate to the child's needs. (See also 'Basis for Decision' above.)

## **Decision:**

**re #3.** The Tribunal recognizes that the child born in 1985's health needs already appear on the Individual Educational Program (IEP). (See Exhibit R-2.) Nevertheless, we make an order that on all the child's IEPs henceforth, there be included a statement that the child is described by a physician as environmentally hypersensitive, and that this is a dynamic condition which may provoke certain health-related needs. So that this matter will be considered at each IPRC review, we further order that the statement continue to appear on the child's IEPs until such time as medical evidence confirms that the child is not environmentally hypersensitive.

**Basis For Decision:**

The fact that the Tribunal makes this order does not reflect on the procedures of the CBE or on the efforts of John Young School in the child's case. However, the Tribunal has two inter-related reasons for making this order. First, we have heard considerable testimony that environmental hypersensitivity is a changing condition. Thus while we have no direct evidence that at this time, the child's learning and behaviour is being interfered with by the physical environment of the school, this is not to say that such interference may occur in the future, and we wish to assure that all future IPRC reviews and other decisions will take this aspect into account.

Second, there is some research evidence suggesting that the etiology of autistic-like behaviours may be at least in part, exogenous. While the evidence is far from overwhelming, it is nevertheless another reason to make sure that in the future, in the child's case, the physical environment of the school not be ignored as a possible cause of the child's behaviours.

**Costs:**

**There will be no order as to costs.**

**Ken Weber, Chair** \_\_\_\_\_

**Gary Dubinsky, Member** \_\_\_\_\_

**Eva Nichols, Member** \_\_\_\_\_

**2 April 1993**