



IN THE MATTER OF the *Education Act*, R.S.O. 1990, c. E.2, as amended, ss. 57(3),
IN THE MATTER OF *Ontario Regulation 181/98*,
AND IN THE MATTER OF the minor child, born 1994

BETWEEN

Mr. & Mrs. S, Appellants

-and-

Halton Catholic District School Board, Respondent

Tribunal Members:

Marilyn Thain	Chair
Derryn Gill	Member
Eva Nichols	Member

Appearances:

Mr. S	Parent
Ms. S	Parent

Ms. Nadya Tymochenko	Counsel for the Halton Catholic District School Board
Mr. Gary Mahoney	Superintendent of Special Education

Stephen Kelly	Secretary
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The preliminary hearing on the matter of jurisdiction was held on July 26, 2005, in Oakville, Ontario.

Introduction

On April 24, 2005, the Appellants, appealed to the Ontario Special Education (English) Tribunal regarding the identification and special education placement of their child, an exceptional pupil. The child is eleven years old and is entering a regular Grade 6 class at a School in Burlington, Ontario, in September 2005.

A preliminary hearing was arranged for July 26, 2005, to determine whether the Tribunal has the authority to proceed and hear the appeal.

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

Legal Framework

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

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

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

Subsection 8 (3): Identification programs and special education programs and services – the Minister shall ... (b) in respect of special education programs and services, define exceptionalities of pupils, and prescribe classes, groups or categories of exceptional pupils, and require boards to employ such definitions or use such prescriptions as established under this clause.

- ***Regulation 181/98***

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

Subsection 9 (1): In accordance with requirements under the *Education Act*, no pupil is to be denied an education program pending a meeting or decision under this Regulation.

Subsection 20 (1): A board shall implement a placement decision made by a committee under this Part when one of the following two events occurs:

1. A parent of the pupil consents in writing to the placement.
2. The time period provided in subsection 26(2) for filing a notice of appeal from the decision expires without a notice of appeal being filed.

Subsection 21 (1): The principal of the school at which a pupil's special education program is being provided,

- (a) may on written notice to a parent of the pupil;
- (b) shall at the written request of a parent of the pupil; and
- (c) shall at the written request of the designated representative of the board that is providing the special education program to the pupil, refer the pupil to a committee established by the board that is providing the special education program to the pupil, for a review of the identification or placement of the pupil.

Subsection 21 (3): Subject to subsection (4), the designated representative shall make a request under clause (1) When in his or her opinion it is necessary to do so to ensure that a review in respect of the pupil is held under this Part at least once in each school year.

Subsection 24 (1): A parent who receives a confirmation under subsection 23 (3) or a statement of decision under subsection 23 (4) may request a meeting with the committee by written notice, delivered within 15 days of receiving the confirmation or statement of decision, to the principal of the school at which the pupil's special education program is being provided.

Subsection 26 (1): A parent of a pupil may, by filing a notice of appeal in accordance with subsection (2) or (3), require a hearing by a special education appeal board in respect of,

- (a) a committee decision under Part IV or V that the pupil is an exceptional pupil;
- (b) a committee decision under Part IV or V that the pupil is not an exceptional pupil; or
- (c) a committee decision under Part IV or V on placement of the pupil.

Subsection 26 (2): A notice of appeal in respect of a committee decision under Part IV shall be filed with the secretary of the board,

- (a) if no meeting is held under section 19, within 30 days of receipt of the statement of decision under section 18 by the parent who is seeking to appeal; or
- (b) if a meeting is held under section 19, within 15 days of receipt of the notice under subsection 19(4) by the parent who is seeking to appeal.

Subsection 26 (3): A notice of appeal in respect of a committee decision under Part V shall be filed with the secretary of the board,

- (a) if no meeting is held under section 24, within 30 days of receipt of the confirmation under subsection 23 (3) or the statement of

- decision under subsection 23 (4) by the parent who is seeking to appeal; or
- (b) if a meeting is held under section 24 within 15 days of receipt of the notice under subsection 24 (3) by the parent who is seeking to appeal.

- **Special Education Tribunal Cases Cited**

D v. Toronto District School Board, 2001

D v. Windsor-Essex Catholic DSB, 2003

O v. Wentworth County Board of Education, 1987

P v. Sudbury District Separate Roman Catholic School Board, 1995

R v. Durham District School Board, 2004

Respondent's Position

Ms. Nadya Tymochenko, counsel for the Halton Catholic District School Board (HCDSB), stated that the Tribunal did not have the requisite jurisdiction to hear the case for the following reasons:

- 1) The Appellants had not exhausted their rights of appeal under the legislation with regard to the IPRC held on April 15, 2004. They signed the IPRC decision arising from that IPRC, dated April 27, 2004, indicating their agreement with both the identification and the placement decision for their child. They did not initiate an appeal of this decision until almost seven months later in October 2004. The appeal was outside the time lines required under subsection 26 of *Regulation 181/98*.
- 2) The parents have appealed the IPRC decision of May 3, 2005, to a Special Education Appeal Board (SEAB); as a result, the Appellant's appeal to the Special Education Tribunal of the April 2004 IPRC decision is now moot.
- 3) Given these circumstances, the child would not be prejudiced by the Tribunal's refusal to hear an appeal of the April 2004 IPRC decision, since a SEAB will hear the appeal related to the May 2005 IPRC meeting in the near future.

In closing Ms. Tymochenko informed the Tribunal that the school board would not raise any objections to the Tribunal hearing the appeal for the May 3, 2005, IPRC meeting without it first being heard by a SEAB, since the school board has not in fact complied with the time lines and directions set out in *Regulation 181/98* for the establishment of an appeal board.

The evidence supporting the respondent's case was given by Mr. Gary Mahoney, currently Assistant Superintendent for the Burlington Family of Schools for the HCDSB, who is soon to assume the position of Superintendent of Special Education for the Board.

Appellants' Position

The Appellants requested that the Ontario Special Education (English) Tribunal assume the jurisdiction of the case of *S v. the Halton Catholic District School Board* (HCDSB) in accordance with section 2 of the *Statutory Powers Procedure Act*, which states: "This Act, and any rule made by a tribunal under section 25.1, shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits."

The Appellants agree that they signed the April 27, 2004, IPRC statement of decision. However, the two Individual Education Plans (IEP) and the IPRC waiver form generated subsequent to the April 27 IPRC statement of decision did not reflect either the identification or the placement to which the Appellants had agreed.

After a number of letters and meetings did not result in an IEP that stated the identification or placement that had been agreed upon or contained the essence of a program that would characterize the placement that had been agreed upon, the Appellants appealed the IPRC decision.

The Appellants requested that the Tribunal assume jurisdiction because they have been denied an SEAB and they have exhausted all other avenues of settling the identification and placement issues.

Remedies Sought

The remedies sought by the Appellants on their child's behalf are:

- 1) The Tribunal assume jurisdiction and hear the case.
- 2) The Tribunal make an order in the best interests of the child that the HCDSB:
 - a) prepare the child to be proficient with Kurzweil software and the use of a personal computer, word processor, and other relevant software to enable the child to achieve a level that is consistent with the child's intellectual abilities.
 - b) develop a focused comprehensive intensive program to address dyslexia
 - c) develop the child's "Regular Classroom with Withdrawal Assistance" placement with an appropriate special education program that provides the child with the necessary appropriate education services to enable the child to be an independent, self-reliant learner and to participate in the child's class at a level with the child's intellectual abilities.

Respondent's Evidence

- 1) Mr. Mahoney stated that the first IPRC was held on April 15, 2004. The statement of decision was finalized at a follow-up meeting held on April 27, 2004.

This IPRC decision originally stated that the child, an exceptional pupil, is a student with a Communication Exceptionality-a Learning Disability. The proposed special education placement was originally written as Regular Classroom with Resource Support. In response to the request made by Appellants, the decision statement was amended to include the diagnosis of dyslexia in the child's identification and the placement determination was changed to read "Regular Classroom with Withdrawal Assistance". These changes to the identification and placement were handwritten. Following these changes, the statement of decision was signed by the parents on April 27, 2004, indicating their support for this decision.

- 2) Mr. Mahoney clarified that the HCDSB is an inclusive board. He stated that the provision of the special education program, whether in the regular class or in a withdrawal setting, depends on the contents of the student's IEP. In response to Ms. Tymochenko's questions about the issue of identification versus diagnosis, Mr. Mahoney stated that such a diagnostic category (dyslexia) is not usually used by the board but that they were prepared to write it in, if the parents so requested.
- 3) He further explained that at the HCDSB, IEPs are generated by a computerized IEP engine, which does not include certain terms in its options. Under these circumstances, the required terms are written in by hand, but such handwritten terms are just as valid as the typewritten ones generated by the computer.

He stated that if subsequent documents, such as an IEP, do not include the handwritten terminology in describing the identification and/or special education placement agreed to by the parents and the IPRC, this is "likely an error, typographical or otherwise, and we would just change it to ensure that it was consistent with the [IPRC] decision".

- 4) Regarding the parents' October 27, 2004, letter to the Director of Education, Mr. Mahoney stated that he had not fully understood whether or not this was a request for a SEAB given that the last IPRC for the child had been held in April. However, he was aware that on November 15, 2004, a formal request was submitted for the establishment of a SEAB.
- 5) The next evidence introduced was the October 5, 2004, IPRC waiver letter. Mr. Mahoney explained that this was a routine practice at the board, offering parents the option of waiving attendance at an IPRC review for the current school year. He went on to state that the fact that both the identification and the placement for the child were not the same as the ones in the April 27, 2004, IPRC statement of decision was due to having being generated by the board's computerized IEP engine. Excluding the terms *dyslexia* and *withdrawal assistance* was not an attempt to change identification or the child's placement or "an effort to

disenfranchise the child from any advantages that would come from the child's identification or placement".

- 6) Mr. Mahoney stated that the June 8, 2004, IEP, although it also did not include the identification and placement descriptions agreed to in the April 27, 2004, IPRC statement of decision, did refer to the provision of withdrawal programming twice a week. This reflected the school board's intent to comply with the IPRC decision.
- 7) Mr. Mahoney then went on to describe the series of meetings held between November 2004 and January 2005, where programming issues were repeatedly discussed by the Appellants and school board personnel, including himself.
- 8) Mr. Mahoney stated that an IPRC was convened on May 3, 2005, and that he and the parents attended this meeting. It emerged from the evidence that there were two IPRC statements of decision related to this IPRC.
- 9) The May 3, 2005, IPRC meeting began with a discussion to amend once again by hand the identification to include the diagnosis of dyslexia and the placement to state withdrawal assistance. Mr. Mahoney stated that the board would not have a problem with making these changes but that the changes would not necessarily result in any changes in programming. The discussion then turned to the psychological assessment results, which indicated that the child could also be identified as a gifted student.
- 10) The parents did not sign this IPRC statement of decision but initiated an appeal.
- 11) A revised IPRC statement of decision was developed by the school board, which changed the identification to Multiple Exceptionality to include both learning disabilities and giftedness. The parents were not invited to participate in this discussion. The revised statement of decision was sent to the Appellants on May 30, 2005, and had only two signatures upon it, because of the absence of the third member of the IPRC. Mr. Mahoney stated that the decision to develop this revised statement was made at the school level.
- 12) Mr. Mahoney stated that he wrote a letter to the Secretary of the Tribunal on July 14, 2005, indicating that the board had appointed an appeal board member with respect to the May 3, 2005, IPRC appeal for the child.

During cross-examination Mr. Mahoney stated that because HCDSB is an inclusive board, it views Regular Classroom with Resource Support to be essentially synonymous with Regular Classroom with Withdrawal Assistance as a special education placement. However, he also acknowledged that, as described in *PPM No. 8* and in the Ministry of Education's *Special Education: A Guide for Educators* document, there is indeed a significant difference between these two placement options. This was further confirmed in his response to the Tribunal's questions.

Ms. Tymochenko supported her arguments by citing several Tribunal cases. In *D v. Toronto DSB (2001)*, the Tribunal held that the time lines for the board should be strictly recognized. In *R v. Durham DSB (2004)*, the Tribunal acknowledged that where the

board acknowledged placement as requested by the parent and that placement was implemented, it was moot for the Tribunal to hear the matter.

Appellant's Evidence

Ms. S served as a witness with questions posed by Mr. S.

- 1) The child transferred to an elementary school in the HCDSB in September 2002 in grade 3. The Appellants informed the child's teacher of the child's reading and articulation difficulties.
- 2) Assessment of the child's difficulties was not initiated until June 2003, ten months later. Testing confirmed the child's weaknesses in language arts and articulation. The Educational Assessment results stated that remedial work in phonics was necessary.
- 3) No IEP was generated. No remedial program was put in place.
- 4) On March 23, 2004, the Appellants met with the principal, the child's teacher, and the resource teacher to request an IPRC. Their specific concerns about the child's progress and about the need for specific intensive programming were discussed at that meeting.
- 5) The Appellants contacted the Community Care Action Centre (CCAC) of Halton seeking speech therapy for their child. They contacted the Trillium Provincial Demonstration School about programming for their child. In each case they were told that the HCDSB would have to request the needed assistance. The HCDSB did not make those requests.
- 6) The initial IPRC meeting took place on April 15, 2004. As a result of that meeting the child's student profile was expanded to better reflect the child's identified strengths. The child's identification was stated as "Communication – Learning Disability diagnosis of dyslexia". The child's placement was listed as "Regular Classroom with Withdrawal Assistance".
- 7) On April 27, 2004, the Appellants signed the IPRC statement of decision with the expectation that (a) the IEP would be "an appropriate special education program to address dyslexia", and (b) "that the program that is developed and implemented to address the student's identified needs be able to withstand professional scrutiny".
- 8) On June 8, 2004, the Appellants received an IEP that did not correctly state either the agreed upon identification or placement for the child. "The IEP is not appropriate for the child because it does not address the child's diagnosed dyslexia and it does not adequately address the child's reading, writing, and spelling needs." The IEP lists May 15, 2004, as the first day of placement. Nearly a year after the child's first in-school "educational assessment results" and two school years after the HCDSB was notified that the child had speech and language difficulties, the school generated an IEP that listed incorrect identification and placement and inappropriate programming.

- 9) After meeting with the principal and school board special education consultant on June 21, 2004, the Appellants were told that the incorrect IEP would not be changed at this time but would be reviewed in the fall.
- 10) In September 2004, the Appellants did not receive a corrected IEP.
- 11) On October 5, 2004, the Appellants received a form letter asking them to consider waiving their right to a review IPRC. This "waiver letter" again listed incorrect information about the child's agreed upon identification and placement.
- 12) The Appellants did not waive their right to a review IPRC meeting and on October 27, 2004, addressed a "letter to the Director of Education asking for assistance in getting their child a program that will address their child's medical/educational needs".
- 13) The Appellants stated that they believed that the October waiver letter resurrected their right of appeal.
- 14) In response to the Appellants' expressed concerns about yet another IEP that didn't correctly report the child's agreed upon identification and placement or address appropriate programming to overcome dyslexia, the Superintendent of Education sent the Appellants a letter stating, "The Halton Catholic District School Board believes that the child's Individual Education Plan (IEP), as prepared by the staff of the Elementary School, is comprehensive and will allow the child to meet success." The Appellants took this to be a final statement that the HCDSB did not intend to deliver the type of programming that would flow from the identification and placement that they had agreed to in the April 27, 2004, IPRC statement of decision.
- 15) On November 15, 2004, the Appellants filed a Notice of Appeal with the Secretary of the Board.
- 16) On November 22, 2004, the Director of Education informed the Appellants that the time allowed for appeal under the regulations had expired, but he suggested a meeting.
- 17) On November 29, 2004, the Appellants met with the Director of Education. They felt no progress was made and presented a letter to the Director naming their representative to the Appeal Board.
- 18) On December 17, 2004, the Appellants again met with the Director of Education. On January 21, 2005, the Director of Education responded in writing, suggesting changes to the child's program to better meet the child's needs and respond to the parents' concerns.
- 19) On January 3, 2005, the Appellants contacted Moira Sinclair, Education Officer with the Ministry of Education, and expressed their dissatisfaction with the HCDSB's response to their concerns and with the fact that the HCDSB was not proceeding with the Appeal process.
- 20) On January 11, 2005, the Appellants received a Speech and Language Assessment Report from the CCAC of Halton.

- 21) Eleven months after the first time the Appellants contacted the Trillium Provincial Demonstration School, no one from the HCDSB had followed up on the Appellants' request that Trillium be contacted about appropriate programming for students with dyslexia.
- 22) On April 25, 2005, the Appellants completed Form A: Notice of Appeal to the Special Education Tribunal.
- 23) On May 3, 2005, the Appellants attended a review IPRC meeting. On the IPRC statement of decision, the child's identification and placement were amended in hand-writing as they had been the previous year. Since the HCDSB had never written an IEP based on the previous IPRC that characterized the "Regular Classroom with Withdrawal Assistance" placement and did not on this statement of decision give enough detail regarding the nature, content, and intensity of the program planned for the child, the Appellants did not sign the IPRC statement. They requested another IPRC meeting.
- 24) By May 30, 2005, no second IPRC had been convened but the Appellants were sent another IPRC statement of decision that changed the child's identification without further consultation with the parents.
- 25) On May 31, 2005, the Appellants participated in an unsuccessful mediation.
- 26) On June 2, 2005, the Appellants filed a Notice of Appeal of the May 3, 2005, IPRC statement of decision.
- 27) On June 15, 2005, the Appellants nominated their representative to the SEAB for the appeal of the May 3, 2005, IPRC statement of decision.

The Appellants want the Special Education Tribunal to take jurisdiction of the case, because they have exhausted their avenues of appeal. They summarized their key arguments to support the Tribunal's jurisdiction as follows:

- The HCDSB has not moved forward with the appeal of the statement of decision for the April 15, 2004, IPRC.
- The HCDSB has missed the deadline to move forward with the appeal of the May 3, 2005, IPRC.
- The HCDSB never implemented the IPRC statement of decision of April 15, 2005. In developing the child's Individual Education Plans, the HCDSB has repeatedly used descriptions of the child's exceptionality and placement that were not consistent with that provided in IPRC statement of decision. The Appellants have met with school board officials many times, and the errors in the IEP description of identification and placement have never been corrected.
- The programming outlined in the student's IEPs does not specifically address dyslexia. It does not adequately address the student's needs for remediation in reading, spelling, writing, and technology. The programming does not fall within

the description of Regular Classroom with Withdrawal Assistance, as described in *PPM No.8* for students with moderate to severe learning disabilities. In *O v. Wentworth County Board of Education (198,)* and in *D v. Windsor-Essex Catholic District School Board (2003)*, Tribunals have found that if the program is inappropriate, it follows that the placement is inappropriate.

- The HCDSB has been reluctant or unwilling to seek assistance with the child's program from established authorities such as the CCAC of Halton or the Trillium Provincial Demonstration School.

Reasons for the Decision

The Tribunal's authority is set out in section 57 of the *Education Act*. In order to assume jurisdiction, the Tribunal must be satisfied that the parents have fully exhausted their rights of appeal of their child's exceptionality identification and/or special education placement and that they are dissatisfied with the identification and/or placement decision.

- 1) The evidence presented clearly showed that the Appellants agreed with the identification and placement determined during the April 2004 IPRC. They signed the IPRC statement of decision on April 27, 2004.

In accordance with section 20 (1) of *Regulation 181/98*, the Appellants did not meet the time lines for appealing the April 27, 2004, IPRC. The school board responded appropriately to this request by providing a meeting for the parents to discuss the identification and placement further, but the board had no obligation under the Regulation to begin the appeal process. The Tribunal cannot accept jurisdiction of the appeal based on the April 27, 2004, statement of decision.

- 2) The evidence showed that the HCDSB erred repeatedly by completing official documents with the wrong identification and placement. Mr. Mahoney explained that he thought it was a "typographical error" and that they could change it to ensure that it was consistent with the IPRC decision. One might understand this type of error occurring once, but it was repeated several times despite the fact that the parents were very clear on what they had agreed to when they signed the April 27, 2004, statement of decision.
- 3) The school initiated an IPRC review on May 3, 2005. The Appellants disagreed with both the identification and the proposed special education placement. They did not accept the statement of decision and they requested a follow-up meeting with the IPRC, in accordance with section 24 of *Regulation 181/98*.

School personnel had a follow-up meeting but did not invite the parents to attend. This resulted in a revised statement of decision, which was then sent to the Appellants. The evidence presented did not show that any discussion had taken place with the Appellants regarding the changes made to the statement of decision. According to subsection 24 (2) of *Regulation 181/98*, the board was required to meet with the parents to further discuss the

decision. This disregard for the parents' involvement is contrary to expected practice consistent with the Regulation.

- 4) The sequence of events that followed demonstrated the board's disregard for the time lines that are set out in the legislation for establishing an appeal board.
- On June 2, 2005, the parents initiated an appeal and on June 15, 2005, named their appointee to the SEAB.
 - In a letter dated July 14, 2005, the school board informed the Tribunal of its nominee to the SEAB. This letter was not copied to the parents or to their nominee. In accordance with section 27 of *Regulation 181/98*, the school board had 15 days in which to appoint their nominee to the SEAB. The expected date of nomination was June 17, 2005.
 - In accordance with *Regulation 181/98*, the chair of the SEAB is to be selected by the two nominees. If the school board had met the time line requirements, the chair should have been selected 15 days after June 17, 2005. This did not happen. By the time of the jurisdictional hearing on July 26, 2005, the time lines for the May 3, 2005, appeal had been exhausted by the parents.

Although the parents did not include the May 3, 2005, IPRC in their notice of appeal to the Tribunal, section 28 of the *Statutory Powers Procedure Act* allows the Tribunal to accept an appeal where the parents have substantially complied with their obligations in relation to the content of forms. In this case, the Tribunal is satisfied that the Appellants have clearly indicated in their Form A: Notice of Appeal that they are appealing their child's identification and placement and that they have provided sufficient notice of such to the HCDSB.

Decision

The Tribunal agrees with the Halton Catholic District School Board that the Tribunal does not have jurisdiction to hear an appeal of the April 15, 2004, IPRC decision.

Based on the evidence received, the Tribunal unanimously agrees that it has jurisdiction to hear the appeal of the May 3, 2005, IPRC decision.

In the Tribunal's view, the child's current special education placement is Regular Classroom with Withdrawal Assistance, as agreed to in the April 27, 2004, statement of decision and as set out in the January 21, 2005, letter to the Appellants from the Director of Education, Lou Piovesan. It is this placement that is stayed pending the disposition of the appeal.

In accordance with subsection 16.1 (1) of the *Statutory Powers Procedure Act*, and subsection 9 (1) of *Regulation 181/98*, the Tribunal orders the Halton Catholic District School Board to implement this placement pending the resolution of the appeal to the Tribunal. If there are any issues around implementation of this order, the parties can return to the Tribunal.

Regarding the Appellant's claim for expenses associated with the programs they have provided for their child, the Tribunal does not have the authority to order the payment of money.

The Tribunal hearing for the appeal of the May 3, 2005, IPRC decision will be scheduled. Both parties will be invited to a conference call for the purpose of setting the dates and making arrangements for the hearing.

Commentary

The Tribunal is concerned about some of the HCDSB's special education procedures that were presented in the evidence at the hearing. Procedural fairness and natural justice are integral to ensuring that the process for identification and placement of exceptional students will occur as set out in the Regulation. Parents and students should be able to rely on certain things:

- Parents should be able to expect that school boards will comply with their mandated duties, as these are set out in the *Education Act*, the Regulations and The Ministry of Education Policy.
- Parents should be able to rely on the fact that, if they agree to a specific identification and a special education placement as part of an IPRC statement of decision, the board in turn will utilize these decisions in all documents and communications relating to the student.

The evidence showed that at no time during the 2004/05 school year did the child have an IEP that accurately reflected in writing the IPRC decision of April 2004. In fact, in spite of the Appellants' expressed concerns about the situation, they were informed in November 2004 that the board considered that the IEP reflecting an identification and placement different from the one that they had signed at the IPRC was adequate to meet the child's needs.

The Tribunal notes that the present process used by the HCDSB to complete special education documents is limited by the computer program used. The computer program should be updated to include placement options as identified in the Ministry of Education's *Special Education: A Guide for Educators* (2001), pages D10 and D11.

- The Tribunal noted that the child was at this school for two years after the child's parents identified a problem before the child had an IEP. All exceptional students are expected to have an IEP that accurately records the exceptionality and placement decision of the IPRC, and that sets out special education programming and services in accordance with the statement of strengths and needs developed at the IPRC. Before a student is formally identified, the student is still entitled to have an IEP to respond to his or her identified needs. The HCDSB should have developed and implemented an IEP for the child after receiving the results of the June 2003 Woodcock Johnson Achievement Tests.

- The Tribunal is concerned that requesting parents to consider waiving an IPRC at the beginning of a school year is not consistent with the intent of subsection 21 (3) of *Regulation 181/98*.

Marilyn Thain, Chair

Derryn Gill, Member

Eva Nichols, Member

September 13, 2005