



ONTARIO SPECIAL EDUCATION (ENGLISH) TRIBUNAL File #22

IN THE MATTER OF the *Education Act*, R.S.O. 1990, C.E. 2;
IN THE MATTER OF Ontario Regulation 305, Regulation made under the *Education Act*, as amended;
AND IN THE MATTER OF the child, born in 1976;

BETWEEN

W.

AND

The Carleton Roman Catholic School Board
Respondent

Tribunal Members:

Wayne Tompkins	Chair
Gary Dubinsky	Member
James Lunney	Member

Appearances:

For the :

J. Rivington, Ms.	Agent on behalf of the
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For the Respondent:

W. T. Green, Q.C.	Counsel of behalf of the Respondent
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The hearing was held at 209 Bayswater St. Ottawa, Ontario March 5,6,7,8 1996 and at 1547 Merivale Rd., Nepean Ontario May 9,10,13,14,15, 1996 and June 10,11,12,13 1996.

Introduction

At the opening of the hearing the chair stated that this Tribunal would be guided by the *Education Act* R.S.O. 1990, C.E. 2 and the Regulations made there under.

S. 37 (6) of the *Education Act* provides as follows:

The Tribunal hearing the appeal may:

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

The chair also stated, " We are meeting to hear and to discuss the progress of [the student]." (Transcript p. 2)

There followed a discussion as to whether the hearing or any part of it should be closed. Argument was presented by Mr. Green favouring a closed hearing and by Ms. Rivington favouring an open hearing. The Tribunal ruled that despite its sympathy for the arguments made by Mr. Green, "We (the Tribunal) are concerned that we keep proceedings as much as possible in an open kind of forum and therefore we will refuse your (Mr. Green's) request and the tribunal will be open." (Transcript p. 7) "If we (the Tribunal) run into situations as we go along that appear to require some extra privacy we will deal with them as we approach them." (Transcript p. 7)

The Appellant's Request for the Student

The Appellant requested a Tribunal hearing of the case pertaining to the student because she believed that her child's rights as an identified "Exceptional Student" have been violated by the Carleton R.C.S.B. The Appellant categorized the issues of concern as: placement\program issues; related support services including staff and equipment issues; and unfair\unjust procedural issues. The Appellant's position is that "the Act does provide an avenue for disputes when there is a dispute between a parent and a board and that is our reason for pursuing it to tribunal." (Transcript p. 25)

The Appellant's position is that "an appropriate and fully developed program has not been established, the program lacks depth and consistent focus, the School Board lacked impetus in coming to grips with and managing the case, (there was) an apparent lack of focus and professional dispatch on the part of the school and the situation has become contaminated by an adversarial atmosphere. The Appellant wants a student specific program plan based on the student's needs." (Transcript p. 25-26)

The Respondent's Reply for the Carleton R.C.S.B.

Mr. Green then made the following submissions on behalf of the Carleton R.C.S.B.:

"[The student] is a nineteen and a half year old student, sadly, the student is severely developmentally

handicapped with accompanying behaviour problems. While the student is integrated into a regular high school class, the student works on individualized programs. The student's integration is age appropriate in what the student is doing, where possible, based on needs and school scheduling, at least school scheduling in a semestered school." (Transcript p. 31)

Witnesses

Chairman's Note:

To accommodate witnesses and to expedite the hearing, witnesses for both parties were heard out of order. This procedure was agreed to by both parties, and both parties were assured of the right to recall if they wished. Summaries of testimony are presented in the usual manner with the Appellant's witnesses first followed by the Respondent's witnesses.

For the Appellant

Friend A
Rick Tutt
Deborah McEwen
Dr. Robert Groves
Marianne Kazmierski
Barbara King
Hellen Bogie
SEAB member
Parent A
Student A (student)
Bruce Rush
Student B (student)
Student C (former student)
Student D (former student)
Joyce Rivington
Dr. Dieter Blindert

For the Respondent

Marilyn Beckstead
Helen Coulombe
Mindy Cohen
Margaret LaBelle
Noella Chishoim
Paul Brown
Julian Hanlon

Summaries of Testimony

Chairman's Note:

Testimony was heard by the Tribunal concerning the school program in which the student was enrolled in the 1994-95 and the 1995-96 school years at St. Mark High School. In the best interest of the student and to obtain as complete a picture as possible of the program provided for this student the Tribunal heard evidence from both the Appellant and the Respondent concerning both years.

For The

Friend A

Friend A is a friend of the Appellant. They met 10 years ago when their children were in the same class at an Ottawa Board of Education School. She is also a teacher by profession, having taught for seven years, but has no certificate in child behaviour training. She testified that she always knew the student to be a sweet child and easy to get along with, but has never observed the student at St. Mark.

From her attendance at meetings with the Appellant and Board personnel, she formed the view that the teaching assistant and the student were not a good mix, but that it was not unusual for a teaching assistant and a student not to “hit it off”. She testified that the Appellant’s concerns about the teaching assistant and the need to change her were not duly considered by Board personnel, and there was, in her view, a breakdown in communication between the Appellant and the Board. In short, Friend A believed that it took too long for the Board to put in place and implement an appropriate behaviour management plan for the student.

D. MCEWEN

Ms. McEwen is a director of 5 social agencies in the Perth and Smiths Falls area and is a professor at St. Lawrence College. She specializes in applied behavioural analysis and trends in development services and teaches from a book entitled “Applied Behaviour Analysis for Teachers.”

In response to questions about the purpose of Individual Education Plan (‘IEP’S’), Ms. McEwen testified that an IEP should be an accountability document giving the reader a sense of what is being done and should be operational at the beginning of the school year. In her view, the goals and objectives in an IEP must be measurable and specific in order for there to be an accountability. They should also be those of the student, not the teacher.

Ms. McEwen testified that while the Individual Behaviour Plan written by Mindy Cohen had excellent strategies on how to deal with the student’s inappropriate behaviour, it appeared that from the way the teaching assistant and resource teacher collected the data on the student’s behaviour, they didn’t have the skills to translate those strategies into an effective behavioural management program for the student. She stated that, in reviewing the February reports of the teaching assistant’s (‘T.A.’)’s regular data collection, and the May 1995 IEP, it was her view that the T.A. would have real problems accomplishing the tasks outlined in this IEP. Ms. McEwen went on to testify that the T.A.’s charting of the student’s behaviour did not provide a lot of information and indicated to her that the T.A. was employing inappropriate intervention techniques in an attempt to modify the student’s behaviour. Had the T.A. employed “correct intervention” and “positive reinforcement” (p. 123) techniques to modify and replace the student’s dysfunctional behaviour, the student’s behaviour would not have escalated to the point where actions led to suspension in September of 1995.

On cross-examination, Ms. McEwen acknowledged that she had never met the student, had never made inquiries on how the T.A. was hired, and admits that the transfer of any student from a small and segregated setting to a large and integrated setting “could create problems”. She also agreed that the development of an IEP was an evolving process.

SEAB member

The SEAB member was a member of the Appeal Board which dealt with the Appellant’s case and has sat as the member representing the Autistic Society on the Special Education Advisory Committee (SEAC”) of the Carleton Board of Education. She has an extensive background with developmentally delayed individuals and advocates and mediates in the areas of health, education and social services for the disabled.

SEAB member’s testimony centred on what she believed was an inappropriate summary of the statement of needs in the student’s January 27, 1995 IPRC. In her view, these needs were pre-determined and made without planning or consideration of the potential impact. In her opinion, a statement of needs should be completed after discussion at the IPRC, not before.

She also gave testimony that the student’s IPRC of January 27, 1995 which placed her in an age appropriate setting was unilaterally changed by Mr. Hanlon, the principal, without parental input or consent.

BARBARA KING

Ms. King is a child care worker by profession and is a long time member of the Integration Action Group, representing this association on SEAC committees since 1987. In May of 1994, she was asked by Marilyn Beckstead to help out on this case and attended a planning meeting on June 24, 1994 at St. Mark to ensure that the transfer of the student to St. Mark from Lester B. Pearson would be as smooth as possible.

Ms. King testified that at the meeting there were three things of particular importance discussed:

- (1) the need for an individual program to be put in place as soon as possible after the student started at St. Mark in September;
- (2) that there be some behaviour management intervention;
- (3) the need to hire a T.A. for the student with a behaviour management background and understanding of behaviour management programs on how to facilitate the inclusion of a special needs student into a high school setting.

In a September 28, 1994 meeting Ms. King testified that Mr. Hanlon seemed “extremely agitated” by what he referred to a number of times as violence on the part of the student. She also testified that while the Appellant’s focus at this meeting was to ensure that an appropriate behavioural management program was put in place for the student, Mr. Hanlon, on the other hand, was more concerned with the violence exhibited by the student and how it impacted on student and teacher safety. After the meeting, she expressed to Mrs. Beckstead her concern regarding the T.A. and her effect on the student, but was assured by Mrs. Beckstead that the T.A. was not a problem at St. Mark.

Ms. King also attended the student’s Mapping (McGill Action Planning System) session on October 27, 1994 and testified that after the session, the music teacher at St. Mark spoke to her and the Appellant and expressed the view that the teaching assistant was saying “no” too many times to the student and standing too close to the student “being in [the student’s] space”. Ms. King stated that she followed this up with a phone call to Helen Coulombe, the educational consultant who headed the Mapping Session, to express her fears. Mrs. Coulombe responded that “some people just saw things through different eyes”.

At a November 4, 1994 meeting with Mr. Hanlon, Paul Brown, the resource teacher, and the Appellant called to discuss further concerns regarding the teaching assistant, the possibility of moving the T.A. was again raised. Ms. King stated that, at this meeting, the Appellant and her advocates were quite clear that they were not criticizing the T.A. as a person, but felt that it would “be in the student’s best interest” if the T.A.s were moved around in the schools so that there would be a change for the student. Ms. King testified that Mr. Hanlon was “adamant that he was not going to move the teacher’s assistant” stating that she “had two small children and needed the job”.

Ms. King testified that on January 20, 1995, she received 2 phone calls, one from a student and one from a parent relating that the student “had been manhandled at school”. It turned out that this referred to an incident involving the student and Paul Brown, the resource teacher. At the subsequent January 27, 1995 IPRC meeting Mrs. Beckstead requested that this incident not be discussed at the IPRC so that they could concentrate on the student’s programming issues. However, she stated that at the IPRC there was no documentation offered to the Appellant regarding the student’s IEP or behaviour management plan. At subsequent meetings held on January 31 and February 28, Ms. King testified that requests by the Appellant to change the T.A. were again denied by the Board.

At the February 28, 1995 meeting, Ms. King stated that the “Data analysis of Daily Log Reports” containing a graph “Frequency of Inappropriate Behaviour” was given to the Appellant. It contained data from Sept. 21\94 to Feb. 23\95 with information from the month of December missing. This data had been compiled by the teaching assistant and Mr. Brown.

She testified that Mindy Cohen’s written report gave written comments on the type of reporting and analysis of the student’s behaviour carried out by the teaching assistant and Mr. Brown and stated that;

- (a) the log entries were written by “a subjective, not an objective observation”

- (b) the entries were written in a narrative, rather than in a “more reliable ABC format”
- (c) the “reports were at times vague”
- (d) “words such as “no, no, no” or “don’t” tend to provoke her”
- (e) “notes were not clear”

Ms. King testified that Ms. Cohen also noted that “[the student’s] behaviour improved when working with peers rather than with the teaching assistant.” Ms. King stated that, at the final meeting attended by her on April 10, 1995, there was still no program information about the student’s program available.

On cross-examination, Ms. King did acknowledge that at the meetings attended by her, the Board did try to focus on improving the student’s programming, in particular, a meeting on February 8, 1995, where the student’s behaviour management program and home\school communications were discussed with a view to making modifications to improve both.

However, Ms. King reiterated that communication to the Appellant concerning the development of a behaviour and academic program for the student was woefully slow and still not in place in the spring of 1995.

Parent A

Parent A is a parent of two students, one who still attends St. Mark, a SEAC representative, President of the Ottawa Chapter for Visually Impaired and Director for Eastern Ontario for Provincial Board of Youth for visually impaired. She also works closely with service providers on issues pertaining to children with special needs. Parent A testified that her daughter witnessed the incident of January 20, 1995, where Mr. Brown physically restrained the student after an incident where the student pulled the hair of a fellow student.

Parent A read a letter that her daughter wrote recounting the incident in which she wrote that, if she was the student “she wouldn’t want to be treated like that” and felt that “there must be better ways to deal with [the student]” (p. 273). Parent A testified that the vice principal had asked the children who witnessed the incident to write an account of it, but that these written accounts, except for a copy of her daughter’s had been destroyed. She also stated that she was worried about the repercussions on her daughter who still attends St. Mark because of the testimony she has given on behalf of the Appellant.

Student A

Student A is the son of the previous witness and is a former student of St. Mark. He gave evidence about an incident which took place in his OAC economics class on March 7, 1995. He testified that a teacher from the Business Department, Mrs. Janice Fillion, was a guest and lectured that “the system of enlightened despotism advocated by the French philosopher Voltaire was the most perfect form of government because it allowed a small select group of society’s brightest to run the government

structure". She then went on to examine the role of differently-abled students in society and in school and called for a vote among students to see who was in favour of letting the student stay at St. Mark with all the rights and privileges of any other student. An overwhelming majority said yes.

Student A went on to testify that Mrs. Fillion asserted that the "Charter of Rights was a joke" and was an excuse for people to sue each other. She also questioned the validity of having the student go to this school since "[the student] will never receive a grade 12 diploma" and that high needs students should not be accommodated in these days of tight budgets.

Counsel for the Respondent introduced a letter from Mr. Larkin, the Director of Education for the Board, to the Appellant dated March 16, 1995 apologizing for the incident and indicating that Mr. Hanlon would be making a correcting statement in this class. He also introduced evidence confirming that Mrs. Fillion also apologized to the class for this incident saying it was unprofessional of her to centre out the student.

BRUCE RUSK

Mr. Rusk is employed by the Peel Board of Education and since 1972 has worked in the Psychology Department. For 10 years he has had responsibility for all special needs students in the Board and as such has participated in many IPRCs for these students. He acknowledged that he doesn't know this student. He testified that, although the IPRC of January 27, 1995, properly identified the student as exceptional which is consistent with the legislative requirement under the *Education Act*, the exceptionality was not specified and there was, in his opinion, no corresponding statement of needs developed for the student. Mr. Rusk testified that, in his opinion, an IPRC identification of "exceptionality" does not make provision for a proper program for the student because it doesn't identify the student's specific condition (exceptionality).

He stated that while an IPRC doesn't have to include a statement of needs, in his view, it certainly falls under the Ministry's "Best Practices" as does the development of an IEP whose objectives (for the student) are measurable and observable identifying specific program components (criteria) to achieve these objectives. In his opinion, the purpose of an IEP is to determine whether a student is making adequate academic and behavioural progress. From his review of the IEPs prepared for the student, they were too general making it difficult to measure the student's progress in these areas.

On cross-examination, Mr. Rusk acknowledged that his testimony was based on information provided by the SEAB member which centred around the early part of the 1994-95 education year and does not take into account the subsequent IEPs which have been developed.

Student B

Student B is a student at St. Mark who witnessed the January 20, 1995 incident between Mr. Brown and the student. She verified the contents of the letter written by her to the vice principal at the latter's request regarding this incident.

Student C

Student C is also a student at St. Mark and in her testimony confirmed the account of the incident as written in Student B's letter and testified by Parent A. She also testified that in her opinion the students aren't totally informed about the student's condition. They all think "she's a really dangerous person". She also stated that students were not given information on how to properly react around the student and that as part of the student's Circle of Friends she never attended a lecture or discussion at St. Mark on disability awareness.

DR. ROBERT GROVES

Dr. Groves has provided psychological services to various school boards in Eastern Ontario supervising the staff who deliver the on-site services and has attended many meetings connected with the planning for an understanding of children in the school setting. He has known the student and the Appellant professionally since the winter of 1983. Initially his task was to assess the student and to assist the Appellant in understanding some of the student's behaviour. He saw the student weekly for 4 years of intensive therapy treatment for variety of symptomatic behaviours such as excessive fears, anxiety, unsocialized reactions, poor ability to attend and establish limits, etc. By the end of the fourth year, the student was functioning in a much calmer and more socially acceptable fashion. He sees the student about once a month now.

Dr. Groves testified that he had serious reservations about the student's proposed placement to St. Mark from Lester B. Pearson because the student would be going from a congregated setting in a small elementary school to a fully inclusive age appropriate setting in a High School with approximately 1700 students. In his view, this was a "huge leap" (p. 665) and probably "doomed to fail" (p. 669). He stated that he would have preferred a placement with a longer and more gradual period of transition" but that wasn't one of the options". In his view, "partial integration for things like music and art" and acquainting the child with exposure to the larger population would have been the preferred option, that is, to increase the amount of integration before moving the student into "an inclusive open community school" (p. 668)

Dr. Groves testified that after the meeting in June of 1994 which he described as "contradictory" because, in his view, "expectations were being placed" on the student that "exceeded [the student's] capabilities" and "the school was not ready to cope with this level of inclusiveness of a child like the student" (p. 671). In short, everyone was committed to try and make it work, but were unrealistic on how to assess what was happening.

Dr. Groves testified that there were telephone calls with St. Mark's staff, one in September with Mr. Hanlon who appeared "pessimistic" about the situation and felt that integration was "accomplishing zilch" and another one in November from Paul Brown to discuss modifications in the behavioural management strategies for the student. Mr. Brown was not discouraged but was looking for help and encouragement in his desire to try a variety of interventions.

Dr. Groves attended a case conference in December where Mr. Hanlon appeared anxious, frustrated and concerned that if the student's behaviour continued, he would receive complaints from parents of other students and wanted to know what to do in that case. He testified that, at this meeting, it was evident to him that the approach the T.A., (as described by her) was taking with the student contributed to the escalation in the student's aggressive behaviour. In his opinion, there was a lack of "conceptual understanding" on how to manage the student (p. 675). Although Mindy Cohen, the behavioural consultant, had been working on a behavioural plan, her heavy caseload did not permit her to put it fully in place sooner. Dr. Groves believed it should have been in place almost immediately at the beginning of the 1994-95 school year.

Dr. Groves was also of the view that those charged with the responsibility for implementing the behavioural program at St. Mark had no experience or benchmarks to draw from on how to implement a program for the student since it was the first time a student like this student had been enrolled at St. Mark. Hence, in his view, there wasn't a recognition of how complicated and far reaching the process would be. This led to "some inappropriate attempts to initiate the behavioural program which contributed to increasing the student's aggression" (p. 677).

In short, Dr. Groves believes that the transition didn't go as well as it could have. In his opinion, "the teaching assistant was probably not qualified to work with someone like this student who does not understand the consequences of behaviour. This corroborates the evidence of Barbara King who testified that the music teacher had taken her aside after a meeting in the fall of 1994 at St. Mark and stated that the T.A. was using "no, no" too much to modify the student's behaviour. It also supports the comments made by Mindy Cohen that the use of the word "no" seemed to provoke the student.

In response to a question from Mr. Dubinsky about whether the Appellant expressed reservations about the option of full integration, Dr. Groves stated that it was his impression that the Appellant was "committed" to this option or that she should commit to it in light of the other options available which, in her view, were unsatisfactory. Dr. Groves believes that the Board went into this placement with the best of intentions but with limited understanding of what resources were needed to make it work, in particular, the hiring of a T.A. fully trained in the management of children like this student. In sum, from Dr. Groves' point of view, the "whole situation was fraught with lack of experience, lack of benchmarks, anxiety around the implications of failure and so forth on everybody's part (p. 696)

On cross-examination, Dr. Groves disagreed with the proposition put forward by counsel for the Respondent that the conflict in this situation was primarily caused by the Appellant's "aggressive" or "strong willed" behaviour. Rather, Dr. Groves testified that, in his opinion, there was aggressive behaviour exhibited by Board personnel as well, who, as professionals and educators, have an extra duty and obligation "to recognize what it's like to be a black, single mother with a handicapped child" and to accept as a fact that this might have a bearing on how the Appellant expressed herself (p. 704). He also testified that the Appellant's anxiety was probably compounded by the fact that she was the only one who would see the student at home and how the day at school had negatively affected the student. In his view, the Appellant's aggression is not random or a general characteristic, but is in response to specific things.

M. KAZMIERSKI AND RICK TUTT

Both of these witnesses gave evidence on the philosophy of inclusion of special needs individuals in the community.

JOYCE RIVINGTON

Mrs. Rivington is a volunteer advocate for the Appellant and in addition to attending meetings with the and Board and Ministry officials, is counsel for the Appellant at this Tribunal Hearing. She testified that in her meetings with Mr. Hanlon, he was more concerned about the daily violence and what to do about it than finding ways of modifying the student's program in order to deal with the cause of the student's behavioural outburst. An example of this was his flat refusal to change the T.A. She also testified that, despite many promises, information on the behavioural program and its implementation, the development of a computer program for the student and an IEP with quantifiable objectives was not forthcoming until almost the end of the 1994-95 school year.

Mrs. Rivington reiterated her view and that of the Appellant that "placement includes programs, services and equipment and is based on the needs of the student". This mirrors the decision of the Special Ed. Tribunal in the O. matter (p. 841)

DIETER BLINDERT

Dr. Blindert has a Ph. D. In Psycholinguistics and for the last 25 years has been working at the Children's Psychiatric Research Institute, now called the Children and Parent Research Institute. His mandate is to work with developmentally handicapped children and adolescents who also exhibit behavioural excesses.

Dr. Blindert testified that although he does not know the student, in his opinion, suspensions should not be arranged for students like this student whose major function of inappropriate behaviour is avoidance. This, in his opinion, will only aggravate the situation. Unfortunately, the *Education Act* regarding suspensions doesn't differentiate between students who are normal and understand the consequences of their actions, from those that are developmentally delayed or handicapped who don't understand these consequences.

In sum, Dr. Blindert testified that on the behavioural issue, suspension is not the most productive strategy for modifying inappropriate behaviour of a student like this student, and, in his view, the principal has a discretion to impose different sanctions or employ a different strategy because suspension under the *Education Act* is not mandatory. In his opinion, the principal in this situation has "incredible leeway" within the limits set up by each Board.

HELLEN BOGIE

Ms. H. Bogie is a principal in the C.R.C.S.B. who was seconded to the Ministry of Education and Training. She is a former coordinator of Special Education with the C.R.C.S.B. Mrs. Bogie testified that the function of the Ministry of Education is to act as a team leader in the field of special education.

Mrs. Bogie testified that in 1991 and 1992, she was the Coordinator of the C.R.C.S.B. student services and was involved in seeking a more appropriate placement for the student than the one that the student was then in under the four Board agreement. Mrs. Bogie was instrumental in having the student after considerable study and inquiry placed in the Lester B. Pearson School.

Mrs. Bogie started her tour of duty with the Ministry of Education in September 1994. Appeals to the Ministry from the Appellant apparently began early in September 1994, and continued and persisted so that toward the middle of the month the education officers at a team meeting brought up the question of this student. Mrs. Bogie was informed by members of the staff of the Ministry of Education that there had been problems in the previous academic year and that the Ministry had representatives at meetings at the Lester B. Pearson School attempting to resolve difficulties and differences that existed between the Board and the Appellant. Mrs. Bogie was also informed that in the previous year the Appellant had expressed dissatisfaction with the amount of integration that her child was obtaining at Pearson. The Appellant wanted her child transferred to a community school which in this case was Saint Mark's High School.

Mrs. Bogie indicated in the evidence that it was very unusual for the Ministry of Education to become so directly involved in an adjustment of issues between a parent and a School Board and she did not know why the Ministry of Education had become involved in the matter of this student's integration and transfer to another school. It is clear from her evidence that such an intervention by the Ministry of Education is a very unusual step for the Ministry to take. (Transcript p. 377)

Mrs. Bogie stated that a normal time frame of three months seems to be contemplated for the development of an I.E.P. Mrs. Bogie outlined the manner in which an I.E.P. is constructed starting with the identified needs in the I.P.R.C. and flowing from that to the School's strategies, objectives and evaluation techniques relating to the I.E.P. and the success in attaining the objectives and goals set out in the I.E.P. (Transcript p. 386)

The intention is that the I.E.P. should be formulated and in place and followed for a sufficient period of time to enable an evaluation to be made of what has been accomplished by the pupil at the end of a three month period. Concerning the propriety of having the needs statement prepared in advance of the meeting of the I.P.R.C. committee Mrs. Bogie said that varied from board to board and also pointed out that if that or any part of the I.P.R.C. was not agreed to by the parent, the parent could signify disagreement simply by not signing the I.P.R.C. report.

Mrs. Bogie, advised that she was a Chairperson at the I.P.R.C. at Lester B. Pearson School. There were I.E.P.s prepared from time to time. These were always signed by the Appellant to indicate that she was satisfied with them. (Transcript p. 388)

Mrs. Bogie also testified that there is available on disc through the School Board office a basic format for an I.E.P. and that this can be developed or changed if the needs change. Mrs. Bogie said that the evaluation of an I.E.P. might keep step with the report cards in an elementary school. With the report cards in a year: there might be three evaluations of an I.E.P. This would depend on the policy of an individual Board. Mrs. Bogie also testified that in a semestered school whatever the practice was for the regular students would apply for the special needs students as well. (Transcript p. 390)

Mrs. Bogie testified that the Appellant and advocates went to Toronto and attended at the offices of the Ministry of Education and Training following which the Ottawa Regional Office was ordered or directed by Toronto's Head Office to become actively involved in the Appellant's case. Mrs. Bogie also testified that at the time that this happened the people in the M.E.T. office in Ottawa were under the impression that some progress was being made through the recommendations of the M.E.T.

Following a meeting between the officials of the Ministry of Education and Training on February 24, 1995, Mr. Perry, the acting head of the M.E.T. Office in Ottawa identified five points in respect of which the Appellant had expressed concern. These points were given to Mrs. Yvone Benton who was a recently appointed Superintendent of Student Services at the C.R.C.S.B. The first point was with respect to the existence of an I.E.P. The Appellant complained that as of this late date in February she had no knowledge of the existence of an I.E.P. for her child. The second concern expressed by the parent was that there appeared to be no behaviour management plan in place. They also complained that there was no behaviour data recording properly sorted and in place. The parent also complained that there was no daily plan available and that you could never get a clear idea of where the student was. The next complaint of the parent was the physical intervention by the teacher. This refers to the incident with Mr. Brown in the corridor on February 20, 1995.

Mrs. Bogie continued her testimony and told about a meeting that was scheduled for February 28, and that she had asked Mrs. Benton to report back to her about the five items that were a concern to the Ministry of Education and Training. The Ministry was not concerning itself for involving itself in any other of the numerous issues between the Appellant and the Board. Mrs. Benton telephoned the Ministry of Education and advised that the five items had been discussed on February 28, and that they had not all been resolved but that they were going to be working on them. March 1st, the Appellant complained about the unsatisfactory nature of the I.E.P. and the behaviour plan that had apparently been presented at the meeting of February 28, and also expressed concern about what she called "personal notes" that were referred to by the principal which she had not been aware of before the meeting of February 28. The personal notes were a new issue and the Appellant was demanding that the Ministry of Education investigate. Mrs. Bogie, under the instructions of her superior Mr. Perry, asked the Appellant to obtain the notes in question from the school and bring them in so that the Ministry could look at them. The Appellant, after a period of a few days, advised that the principal refused to release the notes and that if she wanted to look at them she would have to come to the school to see them.

Mrs. Bogie testified that she asked Mr. Hanlon why an ABC format was not used and had received no satisfactory explanation but simply a statement that it was not done. Mrs. Bogie testified that in October the note taking method changed somewhat being "Chunked" rather than "Writing, Writing." The notes however still continued in anecdotal form and did not follow an ABC format. Mindy Cowen had apparently recommended some changes and the change in note taking during and after the month of October was apparently the result of the interventions and instructions given by Mindy Cowen. (Transcript p. 400)

Mrs. Bogie testified that she felt that some progress toward resolving differences between the parent and the school had been made but by the end of June 1995, the Appellant was again expressing dissatisfaction with the situation.

The Appellant had some difficulty apparently in getting a report card and when she received it, it indicated that the student was going to be placed in some grade 7 levels in the coming year and that this was not in her own opinion age appropriate. The Appellant was not satisfied with the June 1995 I.P.R.C. report and refused to sign it. She had apparently decided to appeal after discussing various options with the Ministry staff.

Mrs. Bogie testified that in her opinion to put the student in grade 7 or 8 classes when the I.P.R.C. required age appropriate placement was a serious deviation from the provisions of the I.P.R.C. and certainly should have been discussed with the parent. (Transcript p. 421)

Mrs. Bogie was asked whether the Ministry felt that the Appellant's concerns were legitimate. She replied that the Special Education team in the M.E.T. office had a number of concerns. Mrs. Bogie testified to the efforts of the M.E.T. to have the difficulties resolved by mediation, however, the parties could not agree on the issues in question.

In response to a question from Mrs. Rivington, Mrs. Bogie explained the "evolution of an I.E.P." as an ongoing program based on continuous evaluation of the student's progress and also whether the strategies used by the teaching staff are appropriate or may need to be changed. (Transcript p. 448)

In response to questions from Mr. Green, Mrs. Bogie agreed that the Appellant's complaints had reached the M.E.T. from the years when the student was a student at L.B. Pearson and therefore the problems existed before her admission to St. Mark's in Sept. 1994.

The M.E.T. staff at the Regional Office had felt that the situation was resolved in the Spring of 1994, however, the issue came forward in Sept. 1994. The purpose of the Ministry staff involvement, which was highly unusual, was the concern that the issue had started to fester again (Transcript p. 4678).

It should be noted that in response to Mr. Green's question "As a trained and knowledgeable person in your field it was not your view that you should be involved prior to being ordered to be involved, is that correct?" Mrs. Bogie's response was, "That's correct." Mr. Green asked Mrs. Bogie if she had at anytime made comments to the Appellant or her advocates that were adverse to or critical of the C.R.C.S.B. or of the handling of the Appellant's case and Mrs. Bogie's response was "certainly not." (Transcript p. 491)

She testified that her whole purpose as a representative of the M.E.T. was to assist in resolving the differences that existed between the Appellant and the School Board.

For The Respondent

Mrs. Marilyn Beckstead, Coordinator of Student Services C.R.C.S.B.

Mrs. Beckstead, as Coordinator, has the responsibility to oversee the operation and management of the Student Services department and to facilitate the availability of Student Services personnel to support school personnel, parents and students within the system. Mrs. Beckstead discussed her

involvement as Coordinator in the development and implementation of inclusive practices within the C.R.C.S.B. The Board Statement of Philosophy reads, in part, that:

“Inclusion means that students with special needs spend all or most of their day in regular classrooms in neighbourhood schools with age peers.”

And further the system

“recognizes that for children whose complexity of needs exceeds these resources a specialized placement may be necessary. Therefore, a full range of services will continue to be made available to students of the Carleton R.C.S.B.” (Transcript p. 925)

Statistics were presented to indicate the application of an inclusive program philosophy:

Pupils supported by Student Services in 44 schools 3231

Pupils in special class placements 260.5 (Transcript p. 934)

Mrs. Beckstead discussed the importance of the trained collaborative in-school teams of staff members who work at the local school level to develop modified programs to meet student needs in the neighbourhood school. The final step in the process is the referral of a pupil to the I.P.R.C. for formal identification and placement. To turn a statement of philosophy into a reality requires major changes in staff attitudes and action. Mrs. Beckstead reviewed for the Tribunal a list of professional development sessions presented for St. Mark's staff from Sept. 95 to Feb. 96. The list includes in part: the high school high needs team; disability awareness; issues around inclusion; team teaching and collaboration; Circle of Friends; new computer programs; nonviolent crisis intervention; behaviour as a form of communication.

The system also provides updating of its resource staff to enable them to carry out their support role for the system.

The impact on the staff of changes in Ministry philosophy was noted in Mrs. Beckstead's discussion of learning outcomes. “In the past we've written objectives for students rather than outcomes. We have looked at what we wanted the child to learn by the end of a given period of time. With learning outcomes we're looking at the outcome for the child rather than our expectation... The Ministry has provided learning outcomes through documents that are currently being implemented. There is a common curriculum. Currently there are math and language standards. All the departments in our Board and the schools have been working very closely and collaboratively at making sure that how special needs children are viewed in the school is the same as how all other children are viewed in terms of learning outcomes. So we've been working at taking those learning outcomes and applying them to a wide range of students within a regular classroom” (Transcript p. 951).

Changes in Ministry expectations and initiatives “place a different spin” on how a staff looks at a student's needs and how a staff write things up. “The way things are documented and written up will change but the bottom line is still a plan for a student. A plan of two years ago would be done differently today.” (Transcript p. 953)

“Transforming a system is a process and it’s a process that we take very seriously. We are endeavouring to ensure that the schools and the teachers and the parents have support as well.” (Transcript p. 954)

On June 20, 1994 the Appellant had signed the report of the I.P.R.C. held May 31, 1994 indicating that she agreed with the identification of the student as an “exceptional student” and the recommended placement of the student in a “regular class with Special Education support “commencing Sept. 1994”.

The January 27, 1995 I.P.R.C. recommendation for the student’s placement commencing Jan. 30, 1995 was “placement to be integration in regular class with Special Education support commencing Jan. 30, 1995”. The Appellant signed the January 27, 1995 I.P.R.C. report indicating that she wanted further discussion. Discussions were ongoing from that time until June 16.

In response to a question from the Chair concerning the involvement and support of principals and trustees Mrs. Beckstead explained the monthly presentations for the Trustees by staff from Student Services. It was also noted that it is common practice for principals to participate in in-service sessions where new material was to be demonstrated for implementation. It was also noted that people who wish to be in positions of added responsibility (e.g. principals or vice-principals) have to have at least Part 1 of Special Education. (Transcript p. 959-961)

Mrs. Beckstead presented a description of the student and her school career based on documentation from the O.S.R. She noted that the student had followed an individualized school program since kindergarten. The student’s level of function in all areas has been significantly below the student’s peers. The student’s areas of strength and needs have remained fairly constant. The student enjoys music; the student’s gross motor skills are well developed; and the student enjoys physical activities. The student needs support in language development with receptive language being stronger than expressive language.(Transcript p. 965)

The student experiences behavioural difficulties on an inconsistent basis related to mood, level of stress and fatigue. (Transcript p. 966)

Mrs. Beckstead explained to the Tribunal that the front of the I.P.R.C. report has a summary statement of needs which may be expanded/changed by the parent at an I.P.R.C. meeting. The second page of the report identifies the pupil’s strengths and needs in more detail but is not an I.E.P. (Transcript p. 971-975)

Mrs. Beckstead noted, for the Tribunal, that the I.P.R.C. of Jan. 27, 1995 has a statement of needs which is somewhat different from May 1994 based in part on input from the Appellant. A work experience program was proposed at that time.

In the review of the four I.E.P.s developed over two years Mrs. Beckstead pointed out the following details:

- the first semester (Sept 1994 - Jan 1995) I.E.P. had program areas noted in priority Inclusion, Behaviour, Language Arts, Gross Motor Skills, Computer Skills.

- the second semester I.E.P. had notations added by the Appellant and her advocates and the staff demonstrating the attempt by the staff to meet the student's needs and to consider input from various sources.
- The I.E.P. for Sept 1995 - Jan 1996 was developed by Margaret Labelle in collaboration with Paul Brown and the teaching assistant but reflects the Appellant's expressed wishes.
- the fourth I.E.P. was prepared by the .5 high needs coordinator Noella Chisholm for use Feb. 1996. Mrs. Beckstead emphasized that "An I.E.P. is designed to be a guide to follow in developing a detailed program. An I.E.P. and a daybook are not the same thing. Teachers use a day book where they write out day by day exactly what it is that they will be doing with their class or an individual pupil., that's not normally the practice in an I.E.P. (Transcript p. 985-987)

It had been agreed that the student would be placed in age-appropriate classes. Mrs. Beckstead noted several factors which have to be considered in placing any student in a semestered high school: - courses are only available in one semester - registration in the course has to be high enough to make a section - the needs of the student (both this student and the other students) have to be considered. Thus some courses were selected based on the Appellant's wishes and some were selected based on these other factors. (Transcript p. 990)

The work experience program was developed by May 1, 1995 for the student, however, her mother wanted to review it before implementation. The Appellant refused to give permission for the work experience program to begin.

Throughout her testimony, Mrs. Beckstead referred to a number of issues which would be addressed in specific detail by members of the staff who were more directly involved:

- Hiring of the Teacher Assistant to work with the student completed according to Board Policy Beckstead (Transcript p. 1011) Hanlon (Transcript p. 1811)
- Assignment in May 1995 of Margaret LaBelle, resource support teacher, to assist P. Brown in attempting to develop an I.E.P. that better reflected what the Appellant hoped to see in an I.E.P. (Transcript p. 1036)
- Attempts by Mr. Hanlon to have bi-weekly meetings with the Appellant were frustrated by the Appellant not attending (Transcript p. 1037)
- Meetings attended by staff, the Appellant and advocates became confrontational. (Transcript p. 1837)

- Explanation for the Board not purchasing the computer module of the Edmark reading program (Transcript p. 1038)
- Summary response to the Appellant's continuing concerns. (Transcript p. 1169-1170)
- Mrs. Beckstead's comments about the continuing role of the school principal in the placement and program details for students (Transcript p. 1184, 1186, 1188)
- Mrs. Beckstead noted concerning programming for the student that, "We certainly did not stop programming for [this student] because we couldn't reach agreement over what the I.E.P. should or should not contain." (Transcript p. 1201)
- Mrs. Beckstead referred to the description of the Four Step Intervention Process and explained for the Tribunal the process by which a student may become a stage four pupil and be considered by an I.P.R.C. (Transcript p. 1459)

NOELLA CHISHOLM

Ms. Chisholm had had experience as a high needs coordinator in the field of special education and commenced her duties at St. Mark in September of 1995. At St. Mark she is responsible to coordinate a team within the school and in Student Services to develop programming for four developmentally delayed students. She testified that she works with her inclusion team by assisting with the development of IEPs, conducting disability sessions with students and teachers in the school in conjunction with team members, and coordinating the Circle of Friends for the student who is one of the 4 students she is responsible for.

Other members of the team are Helen Coulombe, the education consultant, Marg LaBelle, a resource support teacher, Mindy Cohen, behavioural specialist, Marilyn Beckstead, Paul Brown and the Teaching Assistant.

Ms. Chisholm stated that she has three teaching assistants working with her, two of whom, the teaching assistant and Julian Hall work, with the student. She spends 40 minutes a day with the student, one on one, sometimes with the teaching assistant present. Ms. Chisholm went on to testify about the Program she has helped develop and modify for the student to help develop both her academic and motor skills. In her view, the student is "a pleasure to work with". (p.1054)

She also explained the various methods of how to integrate (include) this student in regular classroom group activities. While the student's timetable has her integrated into the grade 10 math class and OAC world issues and geography, her curriculum in these subjects has been modified to allow her to work at her level which, in Ms. Chisholm's opinion, is in the pre-primer or primary area. Ms. Chisholm testified that throughout the 1995-96 year, the student has become "very relaxed, very comfortable with school", is "cooperative" and "likes to interact with the people" (p. 1075). Her aggressive behaviour is the exception, not the rule. She has observed the teaching assistant and the student working together during the 1995-96 school year and testified that "[the teaching assistant] has been excellent with [the student]" (p. 1076). She also testified that the student interacts well with peers.

Ms. Chisholm also testified that part of her duties include working with and making modifications to the IEP for the student. Upon entering St. Mark in September 1995, she reviewed and became familiar with the student's IEP prepared by Marg Labelle in May of 1995.

From September 1995 onwards, she made modifications to the student's programming which in turn would be used to further modify the IEP evolving into an IEP prepared by her in February of 1996. When asked to compare the IEP of May 1995 and the one prepared by her in February of 1996, she acknowledged that the latter's description of goals and objectives allowed for better measurement and evaluation. Ms. Chisholm also gave evidence of the various ways she communicated with the Appellant, including seeking her input in preparing the February 1996 IEP. She asked the Appellant to meet with her to discuss the IEP but she declined. She also testified that she developed a work experience program for the student leading to a job placement to further the student's academic and social skills. This was developed as a result of a suggestion by Dr. Groves at a meeting in the spring of 1995; however, the Appellant did not want this program implemented. In sum, Ms. Chisholm stated that based on her observations throughout the 1995-96 school year, the student has become more relaxed, independent, focussed and confident. She has improved socially and behaviourally (p. 1124-25). She has also seen academic progress and thinks that the student is doing well for the student's abilities (p. 1126).

In response to a question from Mr. Dubinsky, Ms. Chisholm confirmed that she was asked in September 1995 to fill a Board (new .5) position created as a high needs coordinator at St. Mark to work with this student and three other high needs students.

CROSS EXAMINATION

Under cross-examination, Mrs. Chisholm acknowledged that in her review of the student's OSR file, previous IPRCs and previous IEPs, in particular the May 1995 one, there was little in the way of specifics about the student's baseline skills but that the Appellant declined her invitation to come and talk to her about the student's program. She also agreed to look into training on how to provide computer training to high needs students like the student, which resource is not presently available at the board.

Under re-examination, Ms. Chisholm stated that in October she invited the Appellant in to discuss the student's IEP with herself and Mr. Hanlon, but the Appellant declined stating that "there was no IEP as far as she was concerned", and no statement of needs.

HELEN COULOMBE

Ms. Coulombe has been employed by the Board as an educational consultant since 1990 and has in the past had experience in teaching special education. She has also completed Part III of Sp. Ed. with the Ministry.

As an education consultant in Student Services, Ms. Coulombe is responsible for overseeing programs in 12 schools, including St. Mark. She is also a facilitator for inclusion on behalf of special

needs students. Ms. Coulombe went on to describe and outline what she did for the student in chronological terms since September 21, 1994. On that date, she attended a focus meeting with Mr. Brown, the teaching assistant, and Mindy Cohen, where behaviour was the real focus of the discussion. This meeting was called to discuss and improve the means by which the student's transition, academically and socially from a small school with congregated classes to a large integrated high school, would be made more comfortable for the student and her fellow students, teachers and staff.

Mrs. Coulombe gave testimony as to her attendance at a number of meetings which were also attended by other members of the Board, all called to help develop and improve an appropriate academic, social and behavioural program for the student to clarify objectives for the student and sensitize students, staff and teachers at St. Mark, through disability awareness sessions to the student's learning, social and behaviour profile. This included the development and improvement of an IEP, statement of needs and a behavioural management program, as well as a Circle of Friends. In her view, the development of an IEP for the student during the 1994-95 academic year was a evolutionary process.

Mrs. Coulombe maintained that during this process there was always an attempt to ensure close communication between the school team, the Appellant and Student Services. Ms. Coulombe stated that by the beginning of the second term in early February, 1995, the focus changed from behavioural management to "academics" (p. 1395).

She described that on April 24, '95, she received a fax from the music teacher at St. Mark describing an incident where the student pinned down the teaching assistant requiring intervention by the students. This caused the students concern and led to the student's removal from the class but the decision to remove was not taken by Mrs. Coulombe, but by Mr. Hanlon. The meetings throughout the 1994-95 school year culminated with the introduction of Marg Labelle in May of 1995 to help further develop an IEP for the student for the year 1995-96, the follow-up IPRC of June 16, 1995 and to wrap up the season with the Circle of Friends.

She testified that at the June 16, 1995 follow-up IPRC, there was a needs statement prepared by the Appellant. In reviewing the needs cited by the Appellant, Mrs. Coulombe testified that, in her opinion, the Board had met each and every need.

In sum, Mrs. Coulombe stated how proud she was of the student and the staff at St. Mark for the way the student has grown, evolved and has been made to belong as part of the school community.

In response to a question from Mr. Lunney, Mrs. Coulombe did acknowledge that the school board was in transition when the student arrived in September of 1994, inferring that they were not 100% ready for the student in September of 1994. Aside from a home visit by Mr. Brown and the teaching assistant and the student's visit to the school, there were no other transitional activities for the student between June and September of 1994.

MINDY COHEN

Ms. Cohen is employed by the Carleton Roman Catholic Separate School Board as a behavioural resource technician in the Student Services Department and works part-time as a behavioural consultant and part-time as a psycho-educational consultant. Ms. Cohen was shown and gave testimony from the document Summary of Involvement, Behavioural Resource Technician Mindy Cohen, which summarizes her involvement with the student from September 1994 to February 1996. She testified that her role is basically behavioural and her views are based on her observations of the student. Based on these observations, it was Ms. Cohen's view that the inappropriate behaviour exhibited by the student in the first term of the 1994-95 school year decreased in frequency and intensity by the second term.

Ms. Cohen elaborated on the ABC format of reporting behaviour (ABC standing for Antecedent, Behaviour and Consequences) that she employs and trained the professional staff at St. Mark to do when reporting the student's behaviour. Her basic philosophy regarding the hierarchy of discipline is that you employ the least intrusive method in order to modify inappropriate behaviour. Only if the behaviour is a threat to the physical safety and security of others would she employ physical intervention methods.

Ms. Cohen stated that her behaviour management plan should be dynamic and structured to include revisions and modifications. The goal would be to develop, for every inappropriate behaviour, a corresponding appropriate replacement skill. Initially, there would be a plan with general suggestions based on standard theoretical approaches to specific behaviours, then based on feedback, from all parties, including the Appellant, and as part of the evolving process, the plan would become more detailed and individualized. She testified that early on in the planning and tracking of the student's inappropriate behaviour, it is her view that the anecdotal type of reporting carried out by the teaching assistant was not giving an accurate picture of the antecedents of the student's behaviour (p. 1508). In her opinion, reporting using an ABC format for reporting behaviours produces more useful information.

Ms. Cohen testified about the contents of her report where she commented on the quality of the reporting of the student's behaviour by the teaching assistant. Quoting from the report she stated she considered the data not to be extremely reliable or valid, the "log entries were written by a subjective, rather than an objective observer", and were written in a "narrative style, rather than in a more reliable ABC format". In reporting many incidents "antecedents were not clearly classified or delineated" and "reports were at times vague" (p. 1511). Ms. Cohen explained that her comments must be taken in the context that anecdotal reporting will produce this type of result, no matter who is reporting. However, because Ms. Cohen perceived the student to be having great difficulty in the first months of the 1994-95 school year (no matter what type of reporting was used), she felt "[the student's] needs would be better served by focussing on program development" rather than to train the teaching assistant and Mr. Brown on how to do ABC type of reporting (p. 1520).

Hence, Ms. Cohen stated that her comments about the teaching assistant's reporting were not meant to be a criticism of "her skills or capability of performing her function as a teaching assistant", but rather a criticism of anecdotal reporting. She stated that she observed the teaching assistant and the student on "many, many" occasions and, in her view, they had an excellent relationship. She was not

perfect, but in her words “we all have our warts”. Ms. Cohen went on to give evidence summarizing her involvement with the student, including a variety of programs she employed and updated regularly which make up the behavioural management plan. This recommends intervention based on the delivery of positive reinforcement contingent on the development of replacement skills. It appears implementation of the program began on November 4, 1994. Ms. Cohen testified that, in response to the need to improve the quality of communication between the home and school, she also devised a Communicator Sheet to provide a suitable format for communication between the school and the Appellant.

In response to a question from Mr. Lunney, Ms. Cohen did acknowledge that she had to instruct both the teaching assistant and Mr. Brown on how to report using the ABC format.

The first behaviour plan was dated October 25, 1994 (a 5 page document) and the most recent one is dated December 18, 1995, which has evolved into a 10 page document.

Ms. Cohen also outlined the methods employed and program developed over the course of the 1994-95 school year to help in the student’s transition, including:

- (1) sensitivity and disability awareness sessions,
- (2) establishing a Circle of Friends,
- (3) chunking the student’s time into small portions,
- (4) developing benchmarks, and
- (5) focussing on structure and preparing the student for changes in routine.

All this was designed to reduce aggression, develop self-esteem and socialization skills for the student which would enable the student to pursue the academic program.

Ms. Cohen stated that the behavioural plan was an evolving plan. The original plan was dated in October of 1994 and was updated in May of 1995. Between those dates, Ms. Cohen testified that she oversaw the implementation of the plan by consulting with the resource teacher, Mr. Brown, and the teaching assistant as well as with the Appellant. It is through this communication and the ABC type reporting by the teaching assistant and Mr. Brown that the updated May, 1995 plan was produced. The updated plan was formatted differently to make it more consistent with an IEP and more user friendly. Ms. Cohen went on to testify on the goals and objectives in the behavioural plan and elaborated on the methods and strategies employed to achieve them. Basically, these strategies were all geared to the overall objective of “promoting [the student’s] successful inclusive experience” (p. 1597)

It appeared that the evidence being on the details of the development and modifications to the evolving behaviour management plan was elicited to address one of the resolutions being sought by the Appellant as outlined on pps. 1600-1602 of the transcript. Broadly put, the plan fell under the list of

“placement” issues and concerns being raised by the Appellant, given that the view of the Tribunal was that “placement” included the IEP, and the behaviour management program.

Ms. Cohen stated that the updated plan of May 1995 was given to both Mr. Brown and the teaching assistant. Further modifications to the behavioural plan were made by Ms. Cohen in December 1995. Ms. Cohen stated that because of the amelioration in the student’s behaviour in the 1995-96 school year, her visits to St. Mark and direct involvement in the student’s case have substantially decreased.

In response to an inquiry from counsel for the board, Ms. Cohen confirmed that based on her observations in the 1994-95 school year of the student and the resource teacher, Mr. Brown, they had an “excellent relationship” (p. 1610).

In sum, Ms. Cohen stated that behaviour management is not an exact science and that it takes time and it is “not unusual for a student like [this student]” coming from a segregated setting in a large school “to take a year to adjust”. In her opinion, the student had “done a wonderful job adapting to a very new and very difficult situation and for the student “its an excellent learning situation which will facilitate [the student] in the future, in terms of integrating into society as a whole” (p. 1614).

In response to a question by Mr. Lunney and Mr. Dubinsky regarding whether the student’s removal from religion class and suspension were consistent with the least intrusive philosophy of her behavioural modification plan, Ms. Cohen was hesitant to comment on incidents she was not directly involved in or had not witnessed and suggested that Dr. Groves would be in a better position to answer these questions (p. 1617-18). She did, however, acknowledge removal and suspension were not a recommended strategy in her behaviour management plan and the “least intrusive method of dealing with the situation” (p. 1622).

CROSS EXAMINATION

Ms. Cohen acknowledged that the behavioural plan recommends a “hierarchical approach” to follow with respect to escalations in behaviour and that non-violent physical crisis intervention is to be used as a last resort only with respect to the care, welfare, safety and severity of a particular individual. However, she was reluctant to respond to assertions being put to her that the teaching assistant didn’t have a behavioural science background in the skills and training to deal with a child like this student. She responded by stating that the teaching assistant didn’t have “expertise” at her level (p. 1638) and that some in-servicing of her was necessary as would be the case with anyone, but that, in her opinion, both the teaching assistant and Mr. Brown had the knowledge sufficient to carry out her behavioural management program.

MARGARET LABELLE

Ms. Labelle is an itinerant resource support teacher working in the Student Services Department of the Carleton Roman Catholic Separate School Board. Her main involvement with the student was between May 16, 1995 and June 5, 1995 where she assisted with the programming needs for the student. This was to be done in collaboration principally with Paul Brown, the resource teacher, and the teaching assistant.

Ms. Labelle has had experience teaching exceptional students, having taught since 1978 and has a Specialist Certificate in Special Education and has attained certification, Part I, in Alternatives to Violence Project in Montreal in 1995.

One of her roles as an itinerant resource teacher is to go to the schools and offer support in IEP planning and development. She was sent to St. Mark to supplement the IEP for the student that was already in place. This resulted in the development of the May 1995 IEP which changed the format and described objectives more specifically. Ms. Labelle also co-presented a disability awareness session in the student's grade ten math class. In her observations of the interplay between the teaching assistant and the student, she testified that they had a "very positive relationship" and she was "very impressed with [the teaching assistant's] ability to be proactive with [the student]" (p. 1675).

She described the IEP she developed for the student as "just the next step in [the student's] education plan" that she merely further developed what was "already in place and to categorize and to put more detail down" (p. 1678). This, she stated, was part of the "evolving process" of developing an IEP for the student. She further stated that the overall philosophy behind the IEP is to make it "concrete and practical", "age appropriate" and to help the student further on in life and aid in the student's social, as well as academic career (p. 1685). She testified that she was left with the overall impression that the student was a "very happy confident young [person]" (p. 1694).

CROSS EXAMINATION

On cross-examination, Ms. Labelle disagreed with the argument that she was brought in late in the 1994-95 school year to help further develop the student's IEP. She does not look at the process as ending in June of 1995, but that it is an ongoing and continuous process of involvement by members of Student Services to assist in developing a program, academic and behavioural, for the student. She stated that, in her view, the May 1995 IEP was more detailed than previous ones and addressed the concerns of the Appellant.

Mr. Paul Brown

Mr. Paul Brown is one of four special education resource teachers on the staff of St. Mark High School. They share a total case load of approximately 300 pupils who have been identified and placed in special education programs at St. Mark through the I.P.R.C. process. They all exhibit severe behavioural or learning problems. (Transcript p. 1705)

Mr. Brown has nine years experience in the Special Education programs in the C.R.C.S.B. The student was assigned to Paul Brown's caseload for the 1994-95 school year.

Mr. Brown and the teaching assistant hired to work with the student, visited the student's home in August 1994 to meet the Appellant and the student and to observe how the mother handled her child. They also saw some of the student's work from L. B. Pearson. The mother, Mr. Brown and the teaching assistant agreed to arrange for the student to take a walk through St. Mark with one of the student's peer pals before the other students began classes in September 1994. At this time they

located the student's classroom, where the student's locker would be and generally familiarized the student with the new surroundings. (Transcript p. 1709)

Paul testified that this experience was "an eye opener for myself. We'd never had a student at the school with this severe of a disability and certainly I had never worked with a student with that developmental disability and at that point I knew it was going to be a challenge trying to program for [this student]." (Transcript p. 1710)

In preparing a timetable in Sept. 1994, Paul Brown and the staff at St. Mark had certain things to consider: The student's integration in an inclusive environment was of utmost importance; subject matter and staff who could modify the curriculum had to be selected; the teachers selected had to be chosen because of their interest in and ability to work with developmentally delayed students. At the same time the Appellant's expectations for teachers and subjects also had to be considered in making these choices. (Transcript p. 1713)

The Tribunal was informed that the teaching assistant went with the student to each class but Mr. Brown worked with the student in the resource room.

The resource room was a hub of activity with identified students from grade seven to O.A.C. coming for assistance. Some students are assigned to work in the resource room when they are serving an internal suspension for misbehaviour.

Paul Brown testified that he spent 40 minutes per day working with the student on the Bridge reading program and related activities.

Mr. Brown visited L.B. Pearson to look at the I.E.P. which the resource teacher had used.

The Appellant was not pleased with what had happened at Pearson and, certainly not with the I.E.P. The transfer of the student to St. Mark was viewed as a fresh start to be achieved without the benefit of records or resources from Pearson. Paul Brown stated "My concern was to prepare for [the student] at St. Mark. It was a new start and I was determined to make it work".

Mr. Brown testified that there were many meetings scheduled to share information about the student. "Meetings with Helen Coulombe, our special education consultant, Mindy Cohen, the Appellant, her advocates, Doctor Groves. All parties were coming together on many occasions to try and determine what we could do to help the student make this transition to St. Mark a more successful one". (Transcript p. 1725)

Mr. Brown testified concerning the efforts of the staff to assist the student to learn to control unacceptable behaviour. Discussion between the Appellant, her advocates and the staff led to agreement that time-outs would be the acceptable sanctions. The duration of a time-out was to be four minutes; however, if the student was at risk of hurting self or another student the student would have to be restrained. (Transcript p. 1734)

In response to a question from the Board's counsel Paul stated that after Christmas 1994 "[the student] came back to school rested and more in control of her actions." The behavioural program

had been in place for awhile and the student understood money (used as token rewards) so all these things contributed to [the student], behaviour stabilized.” (Transcript p. 1740)

Mr. Brown testified that in his estimation we (St. Mark staff) were fulfilling specifically what the Appellant wanted for her child in so far as the inclusion was concerned. We incorporated the math. We tried to in the computers, have some of the student’s peers work with the student in the library. We were always trying to accommodate the Appellant and her wishes for the student’s program. As far as the reading program we had a meeting and the Appellant suggested that, again, she wasn’t happy with the Bridge Program at all and that perhaps another resource would be the Edmark Series. So...Student Services...ordered that. (Transcript p. 1763)

In response to a question from Mr. Dubinsky Mr. Brown agreed that, in his opinion, the transition for the student from the segregated class at Pearson to the integrated program at St. Mark’s would have been easier if it had been more gradual. (Transcript p. 1767)

JULIAN HANLON

Mr. Julian Hanlon has been the principal of St. Mark High School for five years. He describes St. Mark as a composite high school with approximately 1600 students enrolled in Sept.1994. The C.R.C.S.B. has a philosophy of community schools so any student within their boundary may attend St. Mark. The Board offers a wide range of program to make this possible. Some very specialized programs may still be purchased from other Boards but approximately 98% of students from the St. Mark area are educated at St. Mark. (Transcript p. 1794)

The school enjoys an excellent reputation in the community. The feeder elementary school population is stable but St. Mark has continued to grow with a large influx every year of students from other high schools. They come from other Boards attracted by St. Mark’s reputation. Of the total school population of 1700 in 1994-1995 approximately 275 were identified special education students plus another 50 pupils not formally identified but receiving resource support. Each of the resource teachers has an active caseload of 30-40 students so Paul Brown was responsible for 32 or 33 other students as well as this student.

The Board’s mandate for program is one of full integration. The student was slated to become a pupil who would receive maximum support from the resource teacher, daily. (Transcript p. 1800)

Noella Chisholm, the .5 high needs resource teacher coordinates the work of three T.A.s, who are responsible for four students one of whom is this student. (Transcript p. 1801) Students are used to take responsibility for assisting high needs students to fit into the activities at St. Mark. Programs such as peer helpers, peer tutors, Circles of Friends exist to facilitate the integration of students during lunch hour, before or after school. That is student centred and that’s why it works as well as it does.

Mr. Hanlon testified that the incident concerning the student pulling another pupil’s hair had been properly handled. At the school level it really was a non issue until the Appellant brought it forward. No other parents called. No other students complained.” (Transcript p. 1809)

Concerning the complaints about the teaching assistant, Mr. Hanlon noted that the difficulties she was experiencing were no different than the difficulties everybody was experiencing with the whole transition. In response to the Board's counsel's question Mr. Hanlon agreed that it's not the practice of the Board or the principal to change personnel because somebody complains. No legitimacy was found in the Appellant's complaints.

Mr. Hanlon testified that in his opinion the student was genuinely fond of the teaching assistant and that generally speaking Mr. Brown and the student got along extremely well. (Transcript p. 1816)

Mr. Hanlon testified that in Oct. 1995 a number of parents were questioning how the rights of their children to a safe environment were being protected. Students were also raising questions. He related that he attempted to calm the parents and students fears but that after the student hit another student in the back of the head in religion class he felt that he had to take some more severe action and he suspended the student. Mr. Hanlon decided that an informal suspension, where a parent keeps the student at home would not work in this case due to the Appellant's desire to keep the student at school. A formal suspension was therefore imposed. The Appellant requested an appeal at which her request was denied.

Mr. Hanlon testified that Mrs. Fillion had been invited to present a lecture to an O.A.C. business class on enlightened despotism as a form of leadership. Mrs. Fillion had never taught the student and only knew of the student because of instances around the school. While trying to make a point about leadership she said, "perhaps [the student] would not be in this school if we didn't have enlightened leaders who felt it was in [the student's] best interest and the best interest of other students in the class for [the student] to be here. There was a class vote on the issue. (Transcript p. 1833) Mr. Hanlon and Mr. Larkin, Acting Director of Education, both apologized to the Appellant for this error of judgement by a staff member.

Mr. Hanlon testified that many meetings were held during the 1994-1995 year to discuss behaviour or program etc. Unfortunately the meetings tended to be rather unproductive because the whole meeting, and I'm speaking in general terms for all the meetings, tended to centre around an incident.., we would spend hours on details and unfortunately never really got around to discussing the student and the program and what was best for the student. (Transcript p. 1837)

The Appellant had asked for a complete break from the former program at Pearson and for a new program at St. Mark. As a result Paul Brown didn't have all the details which would have assisted in the transition. A fresh start was being sought.

Mr. Hanlon testified that he wanted to communicate directly with the Appellant. "My comments to [the Appellant] were that as [the student's] mother I wanted to communicate with her directly and not necessarily with the advocates, although they were certainly welcome to attend meetings. The first formal meeting...the Appellant arrived with her advocates and Mrs. King was the spokesman the whole way...the dialogue between myself and herself didn't take place."(Transcript p. 1838)

In his testimony Mr. Hanlon touched on several issues which indicate that in 1994 the relationships between the Appellant and the St. Mark staff were strained:

- The student started forcing the T.A.'s head into an overhead projector in Religion class
- The Appellant's radio comments that no planned programming was taking place for the student
- The teachers were intimidated by the Appellant and her advocates when they arrived for parent-teacher interviews
- Students in Mrs. Ganger's Religion class were becoming very uncomfortable with the student in the classroom.

Based on these factors the student was transferred from Religion to a grade 10 math class. Mr. Hanlon did not seek the Appellant's approval for this change because she had already shown a lack of cooperation. Normally, a principal contacts parents and 90% of the time gets their approval for a subject change. (Transcript p. 1843-1846)

The student's behaviour in year two is much improved and the incidents of aggressive behaviour are much fewer. Mr. Hanlon noted that the behaviour strategies are working. (Transcript p. 1849)

In response to questions from the Board Counsel concerning the preparation and implementation of an I.E.P. Mr. Hanlon indicated that as principal he was responsible for all programming that takes place in the school and so in the broad sense he has responsibility for that. (Transcript p. 1854) The Tribunal heard much discussion by the Appellant concerning the assignment of the student to classes which were not age-appropriate. Mr. Hanlon reported that: the only time the student's been in our grade 7 or 8 panel were the times the student spent in grade 7 & 8 phys. ed. class; the only time in the 1995-96 year that the student was scheduled in grade 8 was the exploratory class to get the student into the music class or block for the semester. Music was one of the topics in which the Appellant wanted the student to become involved.

Decision

The Tribunal unanimously denies the appeal and affirms the decision of the I.P.R.C. of January 27, 1995

The Basis for the Decision

The Law requires that an Identification Placement and Review Committee make a report. It must identify the child's exceptionality and deal with the placement of the child. On the basis of the evidence that the Tribunal has heard that is what happened here. There is no evidence that the Committee was not properly constituted. There is no dispute as to the identification and in spite of the criticism levelled at the report with respect to placement, the evidence established is that the contents of the report relating to placement are within the legal requirements.

On the basis of the information presented by both the Appellant and the Respondent the Tribunal members found many errors of judgement and performance. The data presented indicate that the best

interests of the student became lost in the territorial fighting between the Appellant, her advocates, the School Board staff and the Board.

Doctor Robert Groves summed up the situation in a letter of September 14, 1995 to the Appellant in this way, "The adults needed to ---adopt attitudes toward each other --- that had greater respect for [the student's] adaptation to St. Mark. (Transcript p. 681)

Dr. Groves continues. "I think they went into the situation with good intentions and limited understanding of how difficult this inclusive education would be. I believe that by the time they've done this with three or four or five other students it will be down pat, that the orientation program in August will be in place, the T.A. will be a selected person who is fully trained in management of these kinds of children, that the attitudes of inclusion will be permeated throughout the school and that it will not be seen as a kind of hothouse situation." (Transcript p. 686-7)

The Tribunal members are unanimously of the opinion that the report of the I.P.R.C. of January 27, 1995 in the matter of the student meets the legal requirements and for that reason the appeal must be dismissed. However, this has been a long and bitter struggle that goes back four years and in order to pass judgement on the adequacy of this I.P.R.C. report, it is necessary to put it in context. The beginning of this process is to identify the parties. The Appellant is a highly nervous woman, we are told, whose nerves could not withstand the ordeal of giving evidence and being subjected to cross-examination in these proceedings. In our opportunities to observe her, the Tribunal noted that on one or two occasions she could not contain herself but loudly and vocally interjected in the proceedings, not in a disruptive way but obviously because she simply could not contain her displeasure or distress with something that somebody had said. The Respondent, the Carleton R.C.S.B. has developed over the years since 1985 an integration program and The Ministry of Education has presented the Carleton R.C.S.B. with nine awards for inclusive education. The success which the Board has enjoyed at the elementary school level was not automatically passed on to the secondary schools. The evidence presented to the Tribunal pointed out clearly that the necessary attitudes of inclusion had not permeated St. Mark High School.

The evidence presented also indicated an abrasive, demanding attitude on the part of the Appellant. The tribunal is sympathetic to the concerns of the Appellant, however, the Tribunal found little evidence of a cooperative effort by the Appellant and her advocates in dealing with the board staff at the school or Special Services Department levels. This is perhaps not surprising in view of the fact that the Respondent adopted a hostile, defensive and reactive approach to the Appellant and her requests during the 1994-95 school year. A more carefully planned and proactive approach to programming for the student was implemented in the 1995-96 school year, however, the adversarial approach to the Appellant and her advocates continued.

In giving its evidence much was made by the Board of the very high qualifications of the various members of the staff who were at one time or another involved in the affairs of the student and indeed, we saw before us as witnesses a number of highly trained and highly qualified persons. Nevertheless, the overall demeanor of the Board and its employees and its dealings with the Appellant give the impression that some staff saw themselves as so highly placed and so highly qualified that no person should dare to criticize them, nor would there be any need to consider in a reflective, reasonable

manner any criticisms levelled at the Board or its personnel.

The student entered the Carlton Roman Catholic School Board system in 1990, when the student entered the Lester B. Pearson School in a congregated class room. The student and the Appellant were both known to the School Board and its employees from that time. There was apparently no difficulty or incident of any kind during the first three years that the student was at the Lester B. Pearson but in the third year the student was there, the student's teacher was changed. The methods of the previous teacher and his attitudes toward flexible programming were not used by the new teacher in 1993-94. For three years efforts had been made to integrate the student increasingly into the whole life of the classroom but the new teacher, Mrs. McHenry, tended to keep the student by self.

The Appellant felt that this was a retrograde approach which was pulling the student backward and that it was a withdrawal from inclusion and integration rather than a further step forward in that direction. She vociferously protested and complained to the school authorities with respect to this matter. Her complaints were dismissed or ignored even though they were if not valid at least deserving of investigation and careful consideration. Friction developed between the Appellant and the Board authorities with respect to the effect of the change of the teacher at Lester B. Pearson School. There can be no possible denial by the School Board of a lack of knowledge of the Appellant, her personality, her nervous disposition, and the personal needs of such a person when dealing with the power and authority of a large public corporation such as this School Board. No concessions to these personal factors however ever seems to have been made. It must be understood that this Tribunal did not receive sufficient evidence to enable it to decide whether the Appellant's criticisms of the new teacher at Lester B. Pearson were valid or not but, what is clear from the evidence is that these criticisms never appear to get a thoughtful hearing and consideration from the Authorities employed by the School Board.

In the spring of 1994 the Appellant was pressing for more inclusion for the student. The Appellant wanted an age appropriate placement in a regular classroom. The Appellant demanded a new beginning for the student as an 18 year old in a High School.

An I.P.R.C. was held May 31, 1994 at which the Appellant was present. The recommendation from the meeting was, "The Special Education I.P.R.C. has identified [the student] as an exceptional student and recommends that [the student's] placement be integration in regular class with Special Education support commencing Sept. 1994". The Appellant signed the I.P.R.C. report on June 20, 1994 indicating that she understood and agreed with the committee's recommendation. Thus the parent and the School Board agreed, in the spring of 1994, to move the student to Saint Mark's High School to an age appropriate classroom with special assistance for the student's academic program and behaviour management. The student's educational level of performance, as well as the student's behaviour modification needs, were already known to the Special Services Staff through the four years experience they had with the student at Lester B. Pearson. The Appellant was in favour of the student's transfer to the 1700 student Saint Mark's High School and placement in a regular age appropriate class with assistance for the student's educational needs and behaviour modification.

The School Board appears to have quite readily agreed to the transfer of the student to this new venue. When transferred, the student was going to be the first special needs student entered into the

general classrooms of Saint Mark's High School. The student's entry into this school was truly a historic event in the life of the school and of the School Board which had received a number of commendations in years past for its management of special needs situations in the elementary schools. Having regard to the amount of expertise accumulated by the members of the staff of the School Board it could not be thought that the school board authorities were unaware of the difference presented by a special needs student at 18 years of age in a high school setting and those of the young special needs children in the elementary grades. Notwithstanding the challenge that the School Board had agreed to accept, it is not an exaggeration to say that practically no preparation was made for the arrival of the student at Saint Mark's High School. In the summer of 1994, Mr. Brown who was going to be the student's resource teacher and the teaching assistant who was going to be the student's T.A. visited the student's home once, primarily to observe the student's behaviour and the management of the inappropriate behaviours in the home.

Dr. Groves, a psychologist, has known the student and her mother professionally since 1983. Dr. Groves testified that he had serious reservations about the student's proposed placement at St. Mark H. S. because the transfer from Pearson to St. Mark was a huge leap and probably "doomed to fail". (Transcript p. 669)

In response to the Appellant's expressed desire that the program for the student at St. Mark's should be a new beginning the evidence shows that there was no I.E.P. material provided from L.B. Pearson to Paul Brown, the resource teacher who was to work with the student. There was also no behaviour plan to be followed by Mr. Brown and the newly hired teacher assistant.

In addition to the home visit of Mr. Brown and the teaching assistant, an orientation visit for the student to St. Mark prior to school opening was completed. After the student arrived at the school, the Appellant complained about the T.A. who had been selected for the position. The principal of the school refused to consider the validity of the criticisms of the Appellant for what seems a totally unprofessional and inappropriate reason. He told the Appellant that he would not consider transferring the T.A. and substituting another T.A. for the one he had selected because she had two children and needed the job. If there was any validity or merit in the Appellant's complaints about the TA. that had been selected, there was no evidence that these complaints were given any serious consideration by the school principal.

Dr. Groves noted in his testimony that, "It was my opinion that I felt the teaching assistant was probably not qualified to work with someone like this student and that was escalating into some kind of battle that I didn't know all the details of...not everyone can work with every kind of child." (Transcript p. 683)

The Tribunal heard much evidence about the quality of the Special Services team which was available to assist with the preparation and implementation of programs for the student. But there was little evidence presented at the Tribunal that the large number of highly qualified people who at one time or another became involved with the student ever at any time acted as a team. For example, there are reports of meetings at which one expert was present and yet not present at another dealing with a similar matter or various aspects of the same matter. There is in fact, not only no evidence of a group of people working as a team, but the evidence paints a picture of bureaucratic confusion with people

coming and going with little communication with one another and no cohesion as to the development of the I.E.P. and the behaviour modification program during the first semester of 1994.

During the first semester, there was an endless series of meetings between the Appellant and various representatives of the School Board none of which appear to have accomplished anything in any of the problem areas that existed. It must be clearly understood that the number one problem area was the hostility that existed in the attitude of the Appellant toward the Board and the Board toward the Appellant. Her approach was frequently accusatory and aggressive and unfortunately the Board's approach from the beginning seems to have been arrogant and unmovable. Dr. Groves noted in his testimony that, "I think we're dealing with professionals and that it's our job as professionals (educators and psychologists) to understand where people are coming from and as educators and psychologists and so forth we have an extra duty and obligation to recognize what it's like to be a black, single mother with a handicapped child and how she might express herself in certain ways and to accept that as a fact." (Transcript p. 704)

This is the unhappy background of events that preceded the formulation of the I.P.R.C. report of January 27th, 1995, which is the foundation of these proceedings. This Tribunal has already unanimously determined this I.P.R.C. report meets the requirements of the Law and the appeal against it is dismissed. That does not relieve the School Board of the responsibility to implement both the Letter and the Spirit of the I.P.R.C. report.

By this time, the Appellant was invoking the aid of the Ministry of Education in her battle with the School Board and communicating both with the Regional office in Ottawa and the provincial office of the Ministry of Education and Training in Toronto. She eventually provoked some reaction. According to the evidence of Mrs. Bogie, Education officer M.E.T. when complaints of this kind are received by the Ministry the usual answer is to advise the parent to consult the principal or superintendent of the School Board in question. The Ministry usually does not take any further active part in a dispute between a parent and the School Board. In this case, the Ministry's head office in Toronto eventually ordered the Ottawa office to intervene in a more pro-active way in the ongoing conflict between the Appellant and the Carleton Roman Catholic School Board.

The Tribunal heard several witnesses whose testimony emphasized the lack of preparation and lack of sympathy for the student and the student's needs. Two examples will be recorded here. On Jan. 20, 1995 (almost at the end of semester one for the student in St. Mark's School), the student seized the hair of one of her Circle of Friends. Apparently it was known to the girls who knew the student, that the student could not readily release such a grip. Mr. Brown came out into the hall and started ordering the student to let go. The girls who knew the student better knew that this would have the reverse effect on the student. Mr. Brown then physically disentangled the student's fingers from the hair of the other girl, bent the student's arm up the student's back and took the student down to another floor. The girls who witnessed this were shocked by such heavy handed physical intervention. This incident is evidence of the fact that Mr. Brown had not at the time received adequate training in behaviour management and physical intervention techniques and yet this type of behaviour on the part of the student was well known to the Staff at St. Mark's school before the student enrolled. (Transcript p. 264-269)

Student A, an O.A.C. level student testified concerning an incident which occurred in his O.A.C. Economics class on Mar. 7, 1995. Student A's teacher exchanged classes for one period with another teacher, Mrs. Fillion, who wished to present her views on government. Following her lecture there was a class discussion on different forms of government. Student A testified that Mrs. Fillion said that the French philosopher Voltaire had the most perfect form of government in which all students would be tested and streamed into certain locations and levels of schooling. She then went on to examine the role of "differently-abled" students in society and school. She brought the student's name into the debate and called for a vote among the students to determine their views as to whether the student should be in St. Mark. Student A reported that the overwhelming majority of students voted "Yes". On March 16, 1995 Mr. Larkin, Acting Director of Education for the C.R.C.S.B. wrote to the Appellant "to apologize for the discomfort which this incident has caused you." (Transcript p. 278-283)

Mr. Julian Hanon, Principal of St. Mark's High School, in giving his own testimony indicated that these two incidents were not serious. "Other than Student A coming to see me I had no other student come and complain". I had no calls from other parents other than the Appellant as was the case with the Paul Brown incident. From a school point of view it was really a nonincident." (Transcript p. 1835)

The School Board did make some positive steps in the first semester particularly in the formation of a Circle of Friends. There is no doubt that was an important morale builder for the student and would have gone a long way to assist the student in dealing with fear and other negative emotions the student must have experienced when the student first arrived at the school.

The student was suspended in Oct. 1995 by Principal Hanlon due to the student's instances of unacceptable behaviour. In particular the student had become upset in Mrs. Granger's Religion class and had attempted to put the T.A.'s head into an overhead projector. Other pupils had helped to calm the student. The principal did testify that he had received five complaints from parents of other children about the student, but, whether these motivated him to suspend the student or not is not explicit. It seems likely that he was thinking about the public relations aspect of the matter; and it would help with people who were afraid of the student or critical of the student's presence in the school to take this action. It certainly was not done in accordance with any behaviour modification plan. One cannot help but, to suspect that the whole difficulty might have been avoided had remedial action been taken at the first signs of escalating behaviour problems. This Tribunal is not concerned with the legal propriety or impropriety of the suspension. That falls exclusively within the jurisdiction of another appeal process. But, we must observe that there is nothing in any behaviour plan that we have heard of that suggests that this action on the part of the principal was consistent with any behaviour modification plan. (Transcript p. 115-130)

The Appellant wanted an integrated placement in an age appropriate regular class. At the I.P.R.C. meeting May 31, 1994 it was agreed that the student would be transferred from Pearson to St. Mark High School effective Sept. 1994. This placement was maintained at the I.P.R.C. Jan. 27, 1995. In a letter to the Appellant Sept. 14, 1995 Dr. Groves stated, that "[the student's] transition into St. Mark H. S. last year while not problem-free was not terrible." Further in the letter he stated, "The school had much to learn about accepting a child like [the student]. They had to do this learning over time as does everyone. They are the experts on education and learning. They made errors. That is to be expected and accepted. [The student] was affected by the errors but not irreversibly."

The I.P.R.C. report of Jan. 27, 1995 has a statement of needs and recommended strategies.

Four I.E.P.s were prepared and presented to the Appellant between Sept. 1994 and June 1996. The details of each succeeding I.E.P. became more precise and reflected the input of the parent and the staff. (Transcript p. 1222-23)

In response to questions and comments by the Appellant, Mrs. Beckstead responded, "I could point out that there are many different ways of writing up an I.E.P....the formats that schools use varies but they do include objectives, strategies and method of evaluation.., in all of the I.E.Ps (Transcript p. 1235)

The Appellant questioned the lack of I.E.P.s in the student's O.S.R. file. Mrs. Beckstead replied, that, "There is no legislation governing the length of time that documentation is kept in the O.S.R. The Carleton R.C.S.B. information management retention policy directs the I.E.P. be kept from one school year to the next simply because of the volume of paper. So only the previous to the current I.E.P. should be on file." (Transcript p. 1180-1181)

One of the Appellant's concerns was to ensure that the program components would be implemented in a reliable and consistent manner. The Carleton R.C.S.B. appointed a halftime coordinator of high needs program at St. Mark effective Sept. 1995 to meet this requirement (Transcript p. 1047) Miss M. Labelle, an Itinerant Resource Teacher working with the Student Services Dept. was assigned from May 16, 1995 to June 5, 1995 to assist P. Brown in the preparation of a revised I.E.P. Miss Labelle noted: "Our elementary schools have had greater experience with special needs students of this level before and they are just beginning to arrive at high school level." (Transcript p.1697)

One of the difficulties in the delivery of an individualized program for the student was the lack of age-appropriate resources. Miss Labelle "went back to Helen Coulombe who is the education consultant for St. Mark and to Marilyn Beckstead the coordinator and requested that we purchase some concrete and visual age-appropriate resources. I saw a lack in what we had at the Central Resource Centre." (Transcript p. 1686, 1688)

The Appellant requested that a work experience program be developed for the student to be implemented in Sept. 1995 (Transcript p. 1107). Plans were completed for the student to participate in this program to be based in the office at St. Mark. The parent then requested that this program not begin. (Transcript p. 1103)

In the opinion of this Tribunal the witnesses whom the Appellant called did not give evidence to show that the Respondent is not presently offering a comprehensive program for the student at St. Mark. Some of the details e.g. what specific information should appear in the I.E.P.; or how should the format of the I.E.P. have been designed to meet the Appellant's expectations continue to require cooperative work. The Appellant has strong personal convictions about these matters. The professional staff also have their points of view. The Tribunal has noted the lack of preparation by the staff at St. Mark and by the Special Services resource staff in Sept. 1994 with amazement notwithstanding the parent's request for "a new start." We also note that each semester from Sept.

1995 - Feb. 1996 has shown improvement in all aspects of providing for the student.

Costs

In the unanimous opinion of the Tribunal, the Appellant failed to satisfy the onus placed on her in these proceedings. Accordingly, there will be no order as to costs for the Appellant.

The Carleton R.C.S.B. did not ask for costs and accordingly this Tribunal makes no order as to costs.

It appears to the Tribunal at this time that the present placement of the student is an appropriate one for the remainder of the student's high school program.

Wayne Tompkins, Chair

Gary Dubinsky, Member

James Lunney, Member

September, 27, 1996