



June 29, 2017

To: Renu Mandhane, Chief Commissioner, Ontario Human Rights Commission

***RE: Update of the OHRC's Guidelines on Accessible Education***

Dear Ms. Mandhane,

Our four associations, the Ontario Public School Boards' Association (OPSBA), the Ontario Catholic School Trustees' Association (OCSTA), the Association franco-ontarienne des conseils scolaires catholiques (AFOCSC), and the Association des conseils scolaires des écoles publiques de l'Ontario (ACÉPO), represent English and French public and Catholic district school boards and public school authorities, which together serve nearly all of the elementary and secondary students in Ontario.

Student well-being and achievement are key shared priorities for all of us. Our beliefs are founded on the idea that improving student achievement and student engagement is directly linked to ensuring that we work collaboratively for the social, emotional, mental and physical well-being of all children and youth.

As always, we recognize that school boards must be safe, inclusive and welcoming places, not only for our students and families but the entire school community. Students and staff are entitled to a safe learning and working environment.

## **Consultation of School Boards**

The four associations solicited the feedback and opinions of trustees and staff from our members to several consultation questions. General responses and recommendations are identified below.

**Has your board been affected by any recent developments regarding the definition of “disability” as it relates to students?**

Access to education regardless of disability is a key part of student achievement and the associations' focus on advocacy for strong resources to support a wide range of services for the children and youth in our care. We are aligned with all of our member boards, who seek to ensure they are fulfilling their responsibilities under the Ontario Human Rights Code (hereafter referred to as “the Code”) to best serve students with disabilities.

Many boards are seeing a steady increase in the number of parent requests for educational assistance which may be related to the *Guidelines* as a whole rather than the specific definition. Under Duty to Accommodate in the *Guidelines*, it states: “Once a disability-related need has been identified, or where a prima facie case of discrimination has been established, education providers have a duty to accommodate the needs of students with disabilities to allow them to access educational services equally, unless to do so would cause undue hardship.” The recent increase in educational assistance requests may stem from the interpretation of who and how the need is identified and then how the appropriate accommodation is determined. Many school boards have experienced an increase in the number of students impacted by mental health concerns who require some level of support, intervention, and outside services.

The definition of disability is very broad with respect to what constitutes a disability because it includes past, present and perceived conditions. While the number of applications to the Human Rights Tribunal of Ontario from some school boards has increased slightly over the past few years, it is not clear whether this increase is a direct result of the change in the definition.

There has also been an increase in the demand and request for the use of service animals by students in schools. Many boards have service animal procedures and adhere to the Code guidelines around this issue. However, as publicly funded school systems, we do need to consider competing rights for students and staff who have fears of service animals, cultural sensitivities, or physical or medical realities of their own. School boards are looking forward to the development by the Ministry of Education of an exemplary practice resource guide for the use of service animals in schools.

Finally, another recent development includes requests to accommodate staff/students by permitting the use of a prescribed dosage of medical marijuana while at school. We expect requests like these to become more prevalent as the federal legislation to legalize marijuana is enacted next year.

School boards will continue to review the definition of disability as changes and developments take place to be sure they have a clear and common understanding.

**What type of medical information does your board require from a student requesting an accommodation?  
Is a medical diagnosis ever required?**

Our school boards receive and respond to accommodation requests in a timely manner to ensure students have access to the appropriate supports and resources. Individual student need is at the center of all accommodations to prevent and remove barriers to allow for access and inclusion. Planning takes place in collaboration with parents, school teams, itinerant teachers and outside agencies.

In general, medical diagnoses are required to provide accommodations in the context of physical disabilities such as hearing loss. This would be in the form of an audiological assessment and report from an Audiologist and/or Physician who is an Ear, Nose and Throat Specialist.

Depending on the nature of the accommodation request, other forms of medical information are often helpful in developing a more precise and individualized health management plan to meet the student’s needs. For example, a prescription from an occupational or physiotherapist can be used to access specialized devices or treatment programs. Also, reports from a student’s family doctor or psychiatrist are often helpful

in developing various accommodation plans. Many boards require a psychological educational assessment in order to formally have an Identification, Placement, and Review Committee (IPRC) held for a student.

When a disability is not immediately evident (such as a mental illness or learning disability) it becomes more challenging to obtain the specific medical information required to effectively accommodate the student. This is due to a number of factors, including the reluctance of parents/caregivers to sign two-way consents allowing information sharing with doctors or counsellors or a reluctance to provide any medical documentation whatsoever due to fears related to stigma, lack of privacy or lack of trust.

The Special Equipment Amount of the Ministry of Education's Grants for Student Needs does require a professional governed by a "college" to make a recommendation that equipment is essential to the student's learning. This could be a computer, walker, or augmentative device. Service Animal requests require a notation from a practitioner (in accordance with the *Accessibility for Ontarians with Disabilities Act, 2005 [AODA]*) that states the animal is required to access the school (for a blind student) or the curriculum. Where an itinerant teacher is assigned (for students who are blind/low vision or deaf/hard of hearing) boards do require the medical documentation to ascertain the needs and resources required to support.

**Has your board ever undertaken the duty to inquire about a student's disability-related accommodation needs, even if that student has not made a formal accommodation request? If yes, please elaborate on the reasoning behind the inquiry.**

Our member boards often offer accommodations to students. For example, this could include students who have significant anxiety, in order to support their learning and well-being, even if the student has not formally requested these accommodations. School teams, principals, resource and classroom teachers collaborate with parents/caregivers and the student to identify needs and to determine which strategies and/or accommodations will address the student's accessibility needs. This is facilitated through many forums such as preschool transition meetings, parent/teacher consultation, in-school team meetings, multi-disciplinary case conferences, high school transition meetings, school entry interviews, etc.

Some parents/caregivers understand the system enough to make a formal request. However, school board practices assist in establishing those accommodations.

There are times when an educator/administrator suspects a disability (visible or invisible) and believes that a student may benefit from an accommodation. The accommodation process is a shared responsibility where meaningful dialogue occurs to discuss a student's needs. For example, an educator may see a student struggling or having difficulties. The teacher brings the student's needs to the School Resource Team (SRT) for a meeting with principal/vice-principal, special education resource teacher and other educators. Information is shared and potential accommodations/solutions are discussed with parents/caregivers. Recommendations on strategies and further assessments are proposed and acted on in a timely matter.

Boards responded that in order to accommodate some specific needs, they need to share information with health professionals, which would need parent/guardian approval. Clarity around confidentiality and information sharing should be addressed.

**Do you have any comments on how the Ontario Human Rights Code protected ground of “disability” intersects with other Code grounds? How might this intersection influence the way a student experiences discrimination and harassment?**

Through the ongoing development of programs, supports, service and resources to ensure all students feel safe, valued, respected and included, every effort is made by school boards to maximize the opportunity for our students to engage in learning. However, there may be times a student feels discriminated against due to visible, invisible, real or perceived disabilities. Students with disabilities that are evident may experience taunting, name-calling, or exclusion when the disability intersects with other code grounds that are evident (e.g., religious attire, language barriers/accents, colour). For example, in attempts to accommodate a student with a learning disability with an assistive technology device, a student may feel stigmatized and not want to use the device because that would highlight their need for support, especially in adolescence.

The interplay between Code-related accommodations is challenging in three respects:

1. Balancing the needs between two or more students with potentially conflicting accommodation needs; and
2. The interconnectivity between appropriately programming for students of different cultural backgrounds while attempting to accommodate a disability. It is not uncommon for allegations that a school board has not properly accommodated a disability to be interwoven with competing allegations based on other protected grounds under the Code; and
3. Limitations based on Privacy Laws for disclosure of information to affected parties without consent from the person receiving accommodation, specifically in the case of accommodation based on disability.

**When, if ever, should the right to accommodation be balanced with the rights of other affected people (e.g. school board employees)?**

Under the Code, every student with a disability is entitled to accommodation up to the point of undue hardship. The Code sets out only three elements that may be considered in assessing whether an accommodation would cause undue hardship:

- Cost
- Outside sources of funding, if any
- Health and safety requirements, if any

School boards strive to reach a balance and find accommodations that work for everyone. Part of the challenge is that students and their families can sometimes expect “the best” accommodation, whereas a board’s obligation is to provide “reasonable” accommodation. As a result, finding that intersection between competing rights and expectations can meet resistance from families because the “reasonable” accommodation is not their preferred outcome.

The question of undue hardship is complex and yet critical. In particular, the potential costs to support a student who has a right to be accommodated can be debilitating in a small school board without access to the services, agencies and funding available in larger urban centers.

The needs of the individuals affected must be brought into consideration when meeting the accommodation needs of a student. This is often done on a case-by case basis and is based on the individual needs for each

student being accommodated, as well as the needs of the affected people in order to come to a consensus appropriate for all individuals concerned.

From a human resources perspective, school boards can find themselves in a position where the right to an accommodation of a student may need to be balanced with other students and staff members. If the accommodation of a student would cause hardship to an employee, options should be explored.

All options where there is a conflict are explored, including the relocation of staff if required due to an allergy. When students bring in food and others have an allergy, it is even more complicated when the food is valued by the student's background, culture or ethnicity.

The right to accommodate also needs to be informed by our collective commitment to welcoming and inclusive environments and the perception of safety (or harm) advanced by peers, parents, and workers.

### **Other Comments**

In order to create a barrier-free learning environment, school boards need to be given more financial flexibility and resources to assist with accessibility compliance. Meeting all of the standards in all schools, particularly older schools, is extremely costly and adequate funds have not been provided to boards, which creates an undue financial hardship to the board.

The Commission should consider reintroducing processes to pay for respondents' costs when an application is found to be trivial, frivolous and/or vexatious. Most importantly, while the duty to accommodate is ever-expanding, the resources available to school boards to meet the growing needs remain insufficient. In particular, as it relates to accommodating medical needs, the school board does not employ medical professionals and thus, such accommodations are increasingly challenging, or potentially amount to undue hardship.

We would suggest that a common definition for 'disability' be adopted by all stakeholders. For the OHRC definition we would recommend the use of clear and concise language and refrain from terms such as "and other conditions."

Further comment in the revised *Guidelines* concerning how accommodation applies to extra-curricular programming offered by schools outside of the school day, and also how to apply standards for accommodations in program environments that are highly digitized, would be helpful.

We thank you for the opportunity to provide input into this important review and update of the OHRC's *Guidelines on Accessible Education* and look forward to participating in future consultations.

Regards,



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