

EDUCATION AND DISABILITY

Human Rights Issues in Ontario's Education System

CONSULTATION PAPER
Ontario Human Rights Commission

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I. INTRODUCTION

Education is central to the life of an individual in the community. It provides opportunities for personal, social, and academic growth and development. It sets the stage for later life experiences, most especially in employment. It is also an important venue for integration into the life of the community.

Canada has ratified the United Nations *Convention on the Rights of the Child*ⁱ, which recognizes the importance of education in the life of a child. Article 28 of the Convention recognizes the right of the child to education, and requires states to achieve this right progressively and on the basis of equal opportunity; and Article 29 sets out the aims of such education, including the development of the child's personality, talents and mental and physical abilities to their fullest, and the preparation of the child for responsible life in a free society. As well the *Declaration of the Rights of Disabled Persons*ⁱⁱ affirms the right of persons with disabilities to education.

In Canada, education is recognized as a fundamental social good. A publicly funded education system, accessible to all, is recognized as a core responsibility of government. The Preamble to the Ontario *Human Rights Code* ("the *Code*") sets out the principle that each person should feel a part of the community and able to contribute fully to the development and well-being of the community and the Province. Section 1 of the Code guarantees the right to equal treatment in education, without discrimination on the grounds of disability, as part of the protection for equal treatment in services. This applies to elementary and secondary schools, colleges, and universities, both public and private.

The Ontario Human Rights Commission ("OHRC") has serious concerns regarding accessible education for persons with disabilities. In 1999, the OHRC conducted extensive consultations on disability and the duty to accommodate, as part of the development of its *Policy and Guidelines on Disability and the Duty to Accommodate*ⁱⁱⁱ, released in March 2001. A number of submissions to that consultation raised important issues relating to disability and education. As well, in recent years, the OHRC has received a number of complaints related to discrimination because of disability in the area of education that raise issues of systemic discrimination. Parents, educators, disability consumer groups, and advocacy organizations have contacted the OHRC on an informal basis to express concerns and identify issues. These issues are also receiving widespread public attention, not only from the press, but from academics and research institutes. A number of important studies have recently been released on issues related to children with disabilities in education.

Section 29 of the *Code* gives the OHRC a broad mandate for dealing with issues of discrimination. It is the function of the OHRC to promote an understanding and

acceptance of, and compliance with the *Code*; to undertake research designed to eliminate discriminatory practices; to examine and review statutes and regulations, programs and policies that in its opinion are inconsistent with the intent of the *Code*; and to inquire into conditions leading to tensions or conflict based on identification by a prohibited ground of discrimination and take action to eliminate the source of tension or conflict.

Pursuant to this mandate, the OHRC has therefore decided to initiate public consultations on human rights issues related to education and disability, with a view to developing a public Consultation Report, as well as specific guidelines in this area.

II. SCOPE OF CONSULTATION

As noted above, the OHRC held extensive consultations on disability and the duty to accommodate in 1999. The result was a comprehensive *Policy and Guidelines on Disability and the Duty to Accommodate*, released in March 2001. This document sets out the OHRC's key policy positions in this area, including:

- a definition of disability that recognizes the impact of social handicapping;
- an emphasis on the right of persons with disabilities to integration and full participation;
- recognition of the central importance of design by inclusion, and barrier removal for persons with disabilities;
- reaffirmation of the importance of respect for the dignity of persons with disabilities;
- recognition that persons with disabilities are individuals first, and should be considered, assessed, and accommodated on an individual basis;
- the principle that accommodation is a responsibility shared by all parties to the process; and
- a reaffirmation of the high standard of undue hardship set by the OHRC in 1989.

These principles, and the whole of the *Policy and Guidelines on Disability and the Duty to Accommodate*, form the basis of the OHRC's approach to issues of disability and the duty to accommodate. It is not the intent of this consultation to re-evaluate or reconsider these principles. Rather, recognizing the special nature of educational services, and the complexity of the issues in this area, it is the aim of the OHRC to produce a public Consultation Report as well as specific guidelines to clarify the application of its policies and principles in the education sector.

Issues have been raised with respect to all aspects of education and disability – in both public and private institutions, and at the primary, secondary, and post-secondary levels. Submissions are therefore invited on human rights aspects of all types of educational services.

Education is a complex field, governed by numerous statutes and regulations, regulated by several government ministries, and involving a myriad of players. The OHRC’s mandate is with respect to the human rights aspects of educational services, and what can properly be considered “discrimination” within the meaning of human rights law and policy. This is the focus of these consultations. Not all aspects of education, or even of special education, fall within this mandate.

This paper outlines background information, and identifies a number of issues relating to human rights, disability, and education that have been brought to the OHRC’s attention, for the purpose of providing a framework for submissions on these topics. However, this list is not exhaustive and there may be further issues that fall within the OHRC’s mandate. The OHRC welcomes submissions identifying such issues.

III. HUMAN RIGHTS LAW AND POLICY

1. International Documents

The United Nations *Convention on the Rights of the Child*, Article 23, recognizes the rights of children with disabilities to “enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community”. This Article further requires states parties to extend special care to such children to ensure that they have effective access to, and receive training, education, and preparation for employment, among other services, in a “manner conducive to the child’s achieving the fullest possible social integration and individual development”.

Article 28 of the *Convention* recognizes the right of all children to education. Article 29 sets out the objectives of education, including “the development of the child’s personality, talents and mental and physical abilities to their fullest potential”.

The United Nations *Declaration of the Rights of Disabled Persons* affirms in section 6 the right of persons with disabilities to education and to vocational training and other services which will “enable them to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration”. Section 3 affirms the right of persons with disabilities to respect for their human dignity.

UNESCO's 1994 World Conference on Special Needs Education resulted in the *Salamanca Statement and Framework for Action on Special Needs Education*, which emphasized that educational systems and programs should be designed and implemented to take into account the wide diversity of children's needs and characteristics, and that those with special educational needs should have access to regular schools, which should accommodate them within a child-centred pedagogy capable of meeting those needs. According to this document

[R]egular schools with this inclusive orientation are the most effective means of combating discriminatory attitudes, creating welcoming communities, building an inclusive society and achieving education for all; moreover, they provide an effective education to the majority of children and improve the efficiency and ultimately the cost-effectiveness of the entire education system.

2. Relevant Provisions of the Ontario Human Rights Code

Section 1 of the *Code* affirms the right to equal treatment in services, which includes education, without discrimination because of disability. Section 10(1) of the *Code* provides a broad definition of the term "disability", as follows:

- (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental impairment or a developmental disability,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; ("handicap")

Section 10(3) adds that "The right to equal treatment without discrimination because of disability includes the right to equal treatment without discrimination because a person has or has had a disability or is believed to have or to have had a disability."

Section 11 of the *Code* clarifies that discrimination includes constructive discrimination, in which a requirement, qualification or factor that appears neutral has the effect of excluding or disadvantaging a group protected under the *Code*.

The duty to accommodate is set out in section 17. It is not discriminatory to refuse a service because a person is incapable of fulfilling the essential requirements of exercising the right. However, a person will only be considered incapable if the needs of the person cannot be accommodated without undue hardship.

It is also worth noting that section 14 permits the implementation of special programs to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve equality, or that will likely contribute to the elimination of the infringement of *Code* rights.

3. Policy and Guidelines on Disability and the Duty to Accommodate

As noted earlier, in March 2001, the OHRC released its *Policy and Guidelines on Disability and the Duty to Accommodate*, the result of extensive research and consultation. This document sets out the OHRC's guiding principles in this area, which are applicable to the field of education, as well as to other types of services and social areas.

The *Policy* takes a broad approach to the definition of disability, following Supreme Court of Canada decisions that make it clear that discrimination because of disability may be based as much on perceptions, myths and stereotypes as on actual functional limitations. As well, the *Policy* recognizes the unique challenges faced by persons with non-evident disabilities, such as mental disabilities.

There are three key principles underpinning the duty to accommodate:

- 1) Respect for the dignity of persons with disabilities, including integrity, empowerment, confidentiality, privacy, comfort, autonomy, individuality and self-esteem;
- 2) Individualization, meaning that persons with disabilities are individuals first, and must be considered, assessed, and accommodated individually; and
- 3) Right of persons with disabilities to integration and full participation, which requires inclusive design of facilities, programs, policies, and procedures, and barrier-removal where barriers are found to exist.

The responsibility for successful accommodation is shared by all parties. Everyone involved should cooperatively engage in the process, share information as needed, and avail themselves of potential accommodation solutions. The accommodation process should itself respect the dignity of persons with disabilities, including respect for privacy and confidentiality.

The *Policy* reaffirms the standard for undue hardship set in 1989. The standard is a high one. There are only three factors to be considered: costs, outside sources of funding, and health and safety. The onus of proof is on the person making the claim of undue hardship, and there must be objective, direct, and (where possible) quantifiable evidence to support the claim.

4. Case Law

There are relatively few recent human rights cases dealing with disability and education, perhaps because the caseload of most human rights bodies tends to be dominated by employment-related complaints.

The most prominent recent case dealing with education and disability is *Eaton v. Brant County Board of Education*, [1997] 1 S.C.R. 241, a 1997 decision of the Supreme Court of Canada. This case was decided under the equality rights provisions of the *Charter of Rights and Freedoms* (the “*Charter*”), rather than under human rights statutes. Emily Eaton, a 12-year old student with a disability, was initially placed in an integrated classroom. After three years, her teachers and assistants concluded that this placement was not in her best interests, and that she should be placed in a specialized classroom. Her parents disagreed. An Identification, Placement and Review Committee (“IPRC”) determined that Emily Eaton should be placed in a specialized setting. Her parents appealed the decision, with varying degrees of success, up to the Supreme Court of Canada. The Supreme Court of Canada ruled that the decision of the tribunal to place Emily Eaton in a special education class, contrary to the wishes of her parents, did not violate the equality rights provisions of the *Charter*.

The Court stated that failure to place Emily Eaton in an integrated setting did not create a burden or disadvantage for her, because such a placement was in her best interests. According to the Court ,

While integration should be recognized as the norm of general application because of the benefits it generally provides, a presumption in favour of integrated schooling would work to the disadvantage of pupils who require special education in order to achieve equality Integration can be either a benefit or a burden depending on whether the individual can profit from the advantages that integration provides.

The Court found that the tribunal had sought to determine the placement that would be in the best interests of Emily Eaton, had considered her special needs, and striven to fashion a placement that would accommodate those needs and enable her to profit from the services that an educational program offers.

The Supreme Court of Canada also made some comments of interest in *Adler v. Ontario*, [1996] 3 S.C.R. 609. This case involved students with disabilities attending private religious schools, who as a result were not eligible for the School Health Support Services Program. The case was mainly concerned with whether the failure of the Ontario government to fund private religious schools violated *Charter* rights to equality and to freedom of religion. The majority of the Court found that failure to fund these schools did not violate the *Charter*, and consequently, that the denial of School Health Support Services, which were characterized as educational services, also did not violate the *Charter*. McLachlin J., and L'Heureux-Dubé J., in separate dissents, held that denying this program to students at private religious schools was a violation of their equality rights.

Although dealing with health care, rather than educational services, the Supreme Court of Canada decision in *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 is one of the most important decisions on provision of services to persons with disabilities. In *Eldridge*, the Court ruled that the failure of hospitals to provide sign-language interpreters to enable deaf persons to communicate effectively with doctors and other health care providers was a violation of the equality rights provisions of the *Charter*. The Court found that deaf persons had suffered discrimination because the government had failed to ensure that they benefited equally from a service available to everyone. When governments provide benefits to the general population, they have an obligation to take positive steps to ensure that members of disadvantaged groups, such as persons with disabilities, benefit equally from those services, subject of course to the undue hardship standard.

Similarly, in a 1993 decision by the B.C. Council of Human Rights (*Howard v. University of British Columbia*, (1993) 18 C.H.R.R. D/37), the University of British Columbia was ordered to provide sign-language interpretation services to a student, finding that sign-language interpreters were an accommodation required by deaf students to enable them to access the University's educational services, and that provision of such services would not cause undue hardship.

IV. EDUCATION FOR PERSONS WITH DISABILITIES IN ONTARIO

1. Primary and Secondary Education

Demographics

There is a lack of reliable, current information on children with disabilities in Canada. A recent study^{iv} by the Canadian Council on Social Development (“CCSD”), made some estimates based on data gathered since 1994 by the National Longitudinal Survey of Children and Youth in Canada. According to this study, approximately 13% of children aged 11 or younger had a chronic condition or activity limitation, excluding allergies, “emotional problems”^v, and learning disabilities. If children with allergies are added in, the percentage rises to approximately 23%. If children with emotional problems and learning disabilities are added to the mix, the number rises to over 30%.

Research based on the 1996-1997 National Population Health Survey, which used a definition of disability that included activity limitations, and “special needs”, as well as learning disabilities and emotional problems, found that 14.6% of children aged 6 to 11 were identified in this category.

According to the Roeher Institute^{vi}, between 5 and 20% of Canadian families have children with disabilities. Among children with disabilities, 15% have a moderate or severe level of disability. The most common type of long-term condition among young children aged birth to 14 years is a learning disability, affecting approximately 17 of every 1000 children reporting.

In Ontario’s publicly funded school system, in the fall of 2000, 12.5% of students (over 260,000 children) were receiving special education programs and services.

Figures for 1997 from the Ministry of Education and Training indicated that approximately half of all students identified as “exceptional” had learning disabilities. There were also significant percentages of students identified as developmentally disabled, speech and language impaired, or “emotionally disturbed”. Boys outnumber girls in almost all categories, including those for physical and sensory disabilities, but most strikingly so in those categories where the schools make the basic determination, such as learning disabilities and emotional disturbances. Approximately twice as many boys as girls are identified as learning disabled, and boys in elementary school are more than five times more likely than their female peers to be identified as emotionally disturbed.

Legislative Framework

The *Education Act*^{vii} and its accompanying regulations set out a structure for the identification and accommodation of disability-related needs in Ontario’s publicly funded primary and secondary school system.

Under the *Education Act*, the Ministry of Education is responsible for ensuring that all exceptional children in Ontario have available to them appropriate special

education programs and services without payment of fees. The Ministry is therefore responsible for requiring school boards to implement procedures for identifying student needs, and for setting standards for identification procedures.

Section 1 of the *Act* defines an “exceptional pupil” as one “whose behavioural, communicational, intellectual, physical or multiple exceptionalities are such that he or she is considered to need placement in a special education program”.

The principal of a school may, by his or her own decision, or at the request of a parent, refer a child to an Identification and Placement Review Committee (“IPRC”) for a decision as to whether or not the child is “exceptional”, and if so, whether the child should be placed in a regular classroom with supports, or in a special education class^{viii}. In making these decisions, the IPRC shall consider educational, health and psychological assessments, as well as information submitted by the parents. The IPRC can also interview the student. Where placement in a regular classroom would meet the child’s needs and is consistent with parental preferences, the IPRC must place the child in the regular classroom.

The IPRC also has the power to make recommendations about special education programs and services for the student, but does not have decision-making power in this respect.

Parents may appeal the decision of an IPRC regarding a determination of exceptionality, or the placement of a student. Recommendations regarding programs and services cannot be appealed.

If the decision of the IPRC is not appealed, the principal of the school which the student will attend is notified to prepare an Individual Education Plan (“IEP”) for the student. IEPs include the specific educational expectations for the student, an outline of the special education programs and services to be provided to the student, and a statement of the methods by which the student’s progress will be reviewed. For students aged 14 and over, the IEP must also contain a plan for transition to appropriate post-secondary school activities. In developing the plan, the principal must consult with the student’s parent (or with the student him or herself, if the student is 16 years of age or older), and must take into consideration any recommendations made through the IPRC process.

Funding Structures

The funding structure currently in place to provide for students with special needs is complex. The basic grants that school boards receive for such costs as classroom teachers, heating, and lighting are expected to cover the basic needs of all students, including those with special needs. The Ministry also provides Special Education Grants, which are intended to cover the incremental costs of

special education programs and services. Special Education Grants include both a per-pupil amount, based on overall enrolment, and an Intensive Support Amount ("ISA"), which is intended to recognize differences among boards in the incidence of students with special needs. The ISA covers the cost of programs and services for very high needs students, as well as specialized equipment. ISA Grants are claimed by boards based on specific eligibility criteria.

For the school year ending August 31, 2001, the Ministry's total spending on Special Education Grants was \$1.36 billion, about 10% of the total amount provided to school boards in that year^{ix}. Of this amount, \$724 million was provided through the per pupil amount, and \$571 through the ISA process (the remaining \$66 million was for students in care, treatment and correctional facilities).

2. Post-Secondary Education

Demographics

A study by the Canadian Council on Social Development, using Statistics Canada's *Survey of Labour and Income Dynamics*, illustrates the unequal access of persons with disabilities to post-secondary education in Canada^x. According to this study, in 1998, only 36.4% of persons with disabilities, aged 16 to 64, had graduated from a post-secondary program, as compared to 51.4% of persons without a disability. This appears to be improving very gradually: the statistics for 1993 were 31.3% post-secondary graduation for persons with disabilities, as compared to 48% of persons without a disability.

This differential access is of particular concern given the correlation between higher education and successful transition to the labour force. According to the same study, on the whole, men and women of working age with disabilities were far less likely to have full-time employment than those without disabilities. While 77.4% of men without disabilities were employed full-time in 1998, only 39.2% of men with disabilities were; the numbers for women were 64.8% for women, as opposed to 28.1%. Access to education appears to increase employment opportunities: in 1998, approximately 52% of men, and 41% of women with disabilities who had post-secondary education were employed full-time, as compared to 43% of men and 28% of women with disabilities who had only completed high school.

There is a lack of statistical information regarding the number of students with disabilities currently attending post-secondary institutions. Based on 1991 Statistics Canada figures, it has been estimated that seven percent of the population enrolled in post-secondary education has a disability of some sort. However, Offices for Students with Disabilities have reported a significant increase in post-secondary attendance by students with disabilities in recent

years^{xi}. Based on this figure, it has been estimated that there were 96,000 students with disabilities enrolled in post-secondary education in the 1997-98 academic year, about seven percent of the total enrollment. A comprehensive survey on disability and post-secondary education completed in 1999 by the National Educational Association of Disabled Students^{xii} (“NEADS”) indicated that most of Ontario’s post-secondary institutions had populations of full-time students with disabilities of between 200 and 1200.

According to the NEADS study, which was based on an extensive survey of post-secondary students with disabilities, 36% of students with disabilities at post-secondary institutions self-identified as having learning disabilities, or attention deficit disorder. Mobility impairments were the next most frequently cited type of disability, at 30%. Just under 30% identified sensory disabilities such as vision or hearing conditions. Persons with mental health conditions accounted for just 5% of the survey respondents.

Background

Post-secondary education in Ontario is provided by a wide range of public and private institutions, including publicly funded universities and colleges, private vocational schools, and privately-funded degree-granting institutions. The Ministry of Training, Colleges and Universities is responsible for post-secondary education in Ontario.

Accommodation of students with disabilities at the post-secondary level is not subject to the same detailed legislative structures as at the primary and secondary levels. Accommodation of students with disabilities is governed by the *Charter of Rights and Freedoms*, and by provincial human rights statutes. Post-secondary institutions have developed a wide range of delivery methods and structures in order to meet these obligations. Almost all post-secondary institutions appear to provide some specialized facilities, policies, equipment or services for students with disabilities.

According to a study completed in 1999 by the Canadian Association of Disability Service Providers in Post-Secondary Education^{xiii}, 75% of post-secondary institutions have developed formal disability and accommodation policies, covering such matters as admissions, alternative academic accommodations, experts and advisory committees, service accommodations, procedural considerations, and undue hardship. The content of such policies varies widely.

Larger institutions often have a specific unit responsible for providing and administering services for students with disabilities. Smaller institutions are more likely to have decentralized service models for students with disabilities. Some institutions have offices that coordinate services, rather than directly

administering them. Some institutions dedicate full-time staff to serving students with disabilities, while others rely largely on volunteers^{xiv}.

Common forms of accommodation include academic accommodations^{xv}, provision of or training on adaptive technology^{xvi}, academic assistance such as notetakers, and support services for students with learning disabilities (such as assessment or advice on learning strategies). According to the NEADS survey, two-thirds of responding students required extended test-taking time as a form of accommodation, and approximately half required other academic accommodations. Many students also required adaptive technology, or drugs and medical supplies. Survey respondents indicated difficulties in accessing adaptive technologies (generally for financial reasons) and academic accommodations.

As well, a number of institutions have undertaken initiatives to improve their physical accessibility, and the accessibility of their student housing and programs.

Student organizations and access advisory committees are also important features of the post-secondary structure for persons with disabilities, particularly in terms of providing students with access to information about services and programs, and in providing advocacy support.

Funding Structures

Prior to June 1997, Ontario students with disabilities were provided with support for their educational accommodation needs through the *Vocational Rehabilitation Services Act*. Students made individual applications for funding under the *Act*, which funded the entire cost of the needed accommodation through direct transfer to the student.

Under the new system, students can apply for a Bursary for Students with Disabilities. The Bursary is available to students who are Canadian citizens or permanent residents, are residents of Ontario, have applied for or received a loan through the Ontario Student Assistance Program, and have extra education-related expenses resulting from a disability, which are not covered by another agency. The Bursary, which provides students with up to \$7,000 per year, assists with disability-related costs for students undertaking post-secondary studies. The Bursary is non-repayable, and taxable. Accommodation costs in excess of \$7,000 are the responsibility of the educational institution in question. The Ministry of Training, Colleges and Universities provides targeted grants to universities and colleges for meeting these accommodation needs. As well, students may be eligible for assistance with some expenses from Vocational Rehabilitative Services, Workers' Compensation, or the Assistive Devices Program, depending on their individual circumstances.

There is also a special financial assistance program for deaf, deafened and hard-of-hearing students attending American post-secondary institutions for the deaf.

The Ministry does not, however, provide targeted grants to private vocational institutions. These institutions are not funded by the Ministry of Training, Colleges and Universities. However, they are required, under the *Private Vocational Schools Act*^{xvii}, to meet registration requirements under that *Act* on an annual basis in order to operate legally. A Superintendent of private vocational schools has the power to refuse registration where there are concerns about an institution's financial viability, where the course of study or method of training do not provide the necessary skills or knowledge, where the institution violates the *Act*, or where the conduct of the institution "affords grounds for belief that the applicant will not carry on the private vocational school in accordance with the law and with integrity and honesty".

V. OHRC CASELOAD PROFILE

In the fiscal year 2000/2001, just over 41% of all complaints filed with the OHRC cited disability as one of the grounds. Of the 1,775 complaints filed in that year, 732 referred to handicap. This is in keeping with trends from recent years.

As is generally the case with complaints filed with the OHRC, most disability related complaints dealt with employment issues. Only 133 of these 732 complaints (18%) dealt with services. Services include health, transportation, and other provincial and municipal services, including education, as well as private sector services. In terms of the OHRC's caseload, the absolute number of complaints related to education and disability is likely relatively small.

However, a review of cases related to disability and education that were investigated and placed before the Commission for a decision under section 36 of the *Code* during the last year revealed that a relatively high proportion of these raised systemic issues. Issues include admissions criteria for post-graduate studies, the application of suspension and expulsion policies to students with behavioural-related disabilities (at both the primary and post-secondary levels), the design of the provincial report card, and the provision of academic accommodations at the post-secondary level.

VI. HUMAN RIGHTS ISSUES IN EDUCATION FOR PERSONS WITH DISABILITIES

What follows is a brief summary of human rights issues related to education for persons with disabilities that have come to the attention of the OHRC. This list is not intended to be exhaustive: rather, it is a starting point for discussion.

1. Access to Education

At its most basic, equal treatment in education for persons with disabilities involves equal access to educational opportunities. The *Policy and Guidelines on Disability and the Duty to Accommodate* affirms the duty of education providers to take a proactive approach to disability issues, and to structure their programs and policies so as to be inclusive and accessible for persons with disabilities.

However, concerns have been raised regarding barriers to access to education for persons with disabilities. For example, parents of children with disabilities in the primary and secondary public school system have reported situations where their children are unable to start school with their peers at the beginning of the school year, or are able to attend school only part-time because appropriate supports and accommodations are not available. In some cases, students have lost substantial school time because of disputes regarding the provision of appropriate accommodation.

As well, at all levels of education, there have been reports of private schools and vocational colleges either refusing to accept students with disabilities, or asking students to waive their rights to accommodation as a precondition to entrance.

Where students have disabilities that are associated with behavioural issues, rigid expulsion policies may result in inability to access educational services.

Financial issues have been identified as barriers to access at the post-secondary level. For example, the Bursary for Students with Disabilities is available only to students who qualify for OSAP; however, there are students who do not qualify for OSAP, but nonetheless have substantial needs related to their disability which are financially prohibitive for them. There are also situations where the Bursary does not fund the type of accommodation required, or is inadequate to fund more expensive forms of accommodation.

The trend towards online learning is also worth noting here. While new technology can provide tremendous opportunities for persons with some forms of disabilities, online programs that are not designed inclusively can exclude persons with disabilities.

What other barriers to education for persons with disabilities are you aware of?

Applying the principles in the *Policy and Guidelines*, how can these barriers be addressed?

2. Disability and Other Forms of Discrimination

In Canada, as the understanding of human rights evolves, the focus is increasingly on a contextualized approach to discrimination. A contextual approach recognizes that persons with disabilities may experience discrimination on other grounds in addition to disability, such as race and/or gender. Discrimination may take place on more than one ground simultaneously and these grounds may intersect thus producing new or different forms of discrimination.

In the context of education, students with disabilities may also belong to groups that have been discriminated against historically on grounds other than disability. For example, students with disabilities who are also part of racial minority groups may experience discrimination differently than other students with disabilities. Likewise, female students with disabilities may experience discrimination differently than male students with disabilities. It is therefore important to recognize and address the reality of discrimination as it is experienced by these individuals.

Can you provide examples in which students with disabilities are affected also by being members of other historically disadvantaged groups?

3. Negative Attitudes and Stereotypes

A great deal of discrimination faced by persons with disabilities is underpinned by social constructs of “normality”, which reinforce obstacles to integration, rather than encourage ways to ensure full participation. Discrimination against persons with disabilities may be based as much on perceptions, myths and stereotypes, as on the existence of actual, functional limitations. This is referred to as “social handicapping”.

In terms of education, concerns have been raised regarding negative attitudes and stereotypes regarding persons with disabilities on the part of educators, administrators, and fellow students. These attitudes can pose a substantial barrier to persons with disabilities, as well as creating in themselves an unequal educational environment.

The CCSD study on children and youth with special needs reported that children with disabilities are less likely than other children to feel that other children like them, more likely to be bullied in school and to report that other children say mean things to them, less likely to enjoy school and report doing well in school, more likely to say that they feel left out in school, and less likely to report that they get along well with their teachers^{xviii}.

There are concerns that teachers are not being provided with adequate training, information and in-class support for teaching children with disabilities, and ensuring that they are integrated into mainstream classrooms in a respectful and dignified manner. This impacts, not only on the quality of the educational services children with disabilities receive, but also on their ability to become fully integrated into the classroom.

At the post-secondary level, concerns have been raised regarding training and support programs, and awareness levels among instructors. In the 1999 NEADS survey, most post-secondary disability service providers rated in-service training of instructors as fair, poor, or not available, and indicated difficulties in providing such training and the indifference of instructors as problems.

What best practices are you aware of for reducing negative attitudes, stereotypes and harassment directed towards students with disabilities in the education system?

4. Labelling

Persons with disabilities are individuals first. Each person's needs and strengths are unique, and an accommodation solution that works for one person may not work for another. When accommodations for persons with disabilities are being explored, the emphasis should be on assessing and accommodating each person's unique needs and circumstances, rather than resorting to preconceptions or blanket generalizations about persons with a particular disability.

Some have raised concerns that the accommodation process in place in the primary and secondary school system, and in particular the process for accessing ISA funding, encourages labelling of students, and a focus on labels and stereotypes for pre-determining accommodation needs, rather than assessing the individual needs and strengths of each student. At all levels, it is important that the focus remains on the individual, rather than on the category of disability.

What examples exist of policies and procedures that avoid labels for students with disabilities?

5. Appropriate Accommodation

The OHRC's *Policy and Guidelines on Disability and the Duty to Accommodate* specifies that an accommodation for a person with a disability will be considered appropriate if it respects the dignity of the individual with a disability, meets individual needs, best promotes integration and full participation, and ensures confidentiality. Accommodation will be considered appropriate if it will "result in equal opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges enjoyed by others, or if it is proposed or adopted for the purpose of achieving equal opportunity, and meets the individual's disability related needs".

The identification of the most appropriate accommodation in an educational setting raises a number of issues. For example, at the primary and secondary level, there is ongoing debate regarding decisions to place students in specialized settings as opposed to placing them in mainstream classrooms with supports.

At the post-secondary level, there are debates regarding academic accommodations, such as curriculum modifications or changes to assessment methodologies. The importance of maintaining the integrity and academic standards of programs or courses has been stressed, at times in the context of "academic freedom".

Given the principles set out in the *Policy and Guidelines*, what specific guidelines should inform the determination of the most appropriate accommodation in an educational setting?

What tools could the OHRC provide to assist persons responsible for accommodating students with disabilities, as well as those seeking accommodation, to apply the principles for appropriate accommodation set out in the *Policy and Guidelines* in an educational setting?

6. Accommodation Process

The principles of respect for dignity, individualization, and integration and full participation apply equally to the substance of an accommodation, and to the accommodation process. At the heart of the accommodation process is the responsibility, shared by all parties, to engage in meaningful dialogue about accommodation, and to seek out expert assistance as needed.

The process for accommodation at the primary and secondary levels is largely governed by the *Education Act* and regulations, and is dominated by the IPRC process, and the IEP. The human rights standards outlined above apply to these processes.

At the post-secondary level, processes for accommodation vary widely. There is continuing discussion as to the most appropriate processes for ensuring accessible, integrative, dignified and efficient accommodation for post-secondary students with disabilities.

What best practices are you aware of for accommodation policies and procedures in an educational setting?

7. Roles and Responsibilities

All parties to the accommodation process share responsibility for its success, and have a duty to co-operatively engage in the process. Each party has rights, as well as responsibilities.

Given the multiplicity of parties involved in accommodation in the educational sector – parents, students, educators, administrators, experts, government, support staff, and at times unions – the identification of roles and responsibilities during the accommodation process can be complex. This is particularly the case where students are young and/or unable to communicate, and therefore unable to advocate on their own behalf.

Based on the principles set out in the *Policy and Guidelines*, what should be the respective responsibilities of parents, students, educators, experts, government and other parties for accommodation of students with disabilities?

8. Undue Hardship Standard

The undue hardship standard is set out in detail in the *Policy and Guidelines*. The standard is a high one. Business inconvenience, third-party preferences, impact on morale, and collective agreements are not relevant factors in an assessment of undue hardship. The considerations set out in the *Code* are costs, outside sources of funding, and health and safety. The onus of proof lies on the person making the claim of undue hardship, and the evidence provided must be objective, real, direct, and, where possible, quantifiable.

The application of the undue hardship standard raises unique issues in the educational context. For example, given the often complex nature of funding for educational services, how are costs allocated and assessed? Which parties have responsibility for the cost and the provision of accommodation for students with disabilities? What does health and safety mean in the classroom setting?

What specific issues need to be addressed in applying the OHRC's policies and guidelines on undue hardship in an educational setting?

What mechanisms would you recommend be established to promote ongoing dialogue on issues related to education, disability, and human rights?

Are there other issues related to the Ontario *Human Rights Code*, disability, and education that you would like to raise?

VII. CONSULTATION INFORMATION

The OHRC welcomes your comments on some or all of the questions raised in the consultation paper. We also welcome identification of additional human rights issues related to disability and education. Submissions should focus on issues that are within the OHRC's jurisdiction.

Submissions can be mailed, faxed or e-mailed to the OHRC, at the following address:

**Ontario Human Rights Commission
Education Consultation
Policy and Education Branch
180 Dundas Street West, 8th Floor
Toronto, Ontario
M7A 2R9**

Fax: (416) 314-4533

E-mail: info@ohrc.on.ca

Your written submissions should be provided to the OHRC no later than **OCTOBER 7, 2002.**

Should you have any questions about the consultation process, you may contact the OHRC by telephone at (416) 314-4507, or 1-800-387-9080, or by TTY at (416) 326-0603 or 1-800-308-5561.

Information provided during the consultations is subject to the requirements of the *Freedom of Information and Protection of Privacy Act*. The information obtained during the consultation may form part of a report that may be made public.

ENDNOTES

- ⁱ Entry into force September 2, 1990, ratified by Canada December 13, 1991.
- ⁱⁱ Proclaimed by the General Assembly, Resolution 3447 (XXX) of December 9, 1975.
- ⁱⁱⁱ Ontario Human Rights Commission, *Policy and Guidelines on Disability and the Duty to Accommodate* (March 2001), available online at www.ohrc.on.ca.
- ^{iv} Canadian Council on Social Development, *Children and Youth with Special Needs*, (November 2001), available online at www.ccsd.ca.
- ^v This is the term used by Statistics Canada.
- ^{vi} Roeher Institute, *Count Us In: A Demographic Overview of Childhood and Disability in Canada* (2000).
- ^{vii} R.S.O. 1990, c. E.2
- ^{viii} *Identification and Placement of Exceptional Pupils*, O. Reg. 181/98.
- ^{ix} Office of the Provincial Auditor General of the Province of Ontario, *2001 Annual Report*, Section 3.06, "Special Education Grants to School Boards".
- ^x Canadian Council on Social Development, *Disability Information Sheet Number 2*, (2001), available online at www.ccsd.ca.
- ^{xi} Canadian Association of Disability Service Providers in Postsecondary Education, *Towards Developing Professional Standards of Service: A Report on Support for Students with Disabilities in Postsecondary Education in Canada* (1999).
- ^{xii} National Association of Disabled Students, *Working Towards a Coordinated National Approach to Services, Accommodations and Policies for Post-Secondary Students with Disabilities: Ensuring Access to Higher Education and Career Training* (July, 1999).
- ^{xiii} See Canadian Association of Disability Service Providers, *supra*, note 11.
- ^{xiv} See National Association of Disabled Students, *supra*, note 12.
- ^{xv} Examples of academic accommodation include extended test times, extended time limits for course completion, private rooms for test writing, modifications to attendance requirements, and provision of alternative formats for examinations or course requirements (e.g., oral examination substituted for essay).
- ^{xvi} Such as, for example, voice activation software, or large print computers.
- ^{xvii} *Private Vocational Schools Act*, R.S.O. 1990, c. P.26, s. 5.
- ^{xviii} Canadian Council on Social Development, *supra*, note 4.