**Ontario Human Rights Commission - Guidelines on Accessible Education Feedback**

The **Provincial Parent Association Advisory Committee on Special Education Advisory Committees** (PAAC on SEAC) was established in 1983 and is the only group in Ontario that brings together provincial parent associations to communicate and co-operate on issues pertaining to SEACs. PAAC, and its member organizations, encourage valuable partnerships among trustees, educators, voluntary associations and parents. PAAC on SEAC members have been working closely to improve SEAC effectiveness and communication, and to assist Ontario’s students with special education needs through our shared advocacy.

PAAC would like to commend the OHRC for their work in developing the Guidelines on Accessible Education and looking for public feedback on how to update them now. This work is timely, as currently, the Ministry of Education and the Accessibility Directorate of Ontario are also seeking input on the creation of an Accessibility Standard in education. We hope that the OHRC and the Ministry of Education will look to each other to share their findings on such an important issue as accessible education and see a great opportunity for collaboration between the groups.

The following is feedback, which was collected from our membership in response to your consultation. If any of the feedback is unclear or you are looking for further discussion on the comment please do not hesitate to connect with us directly.

General Considerations

* Ableism: Efforts by the Ministry of Education and school boards in Equity and Inclusion strategy rarely consider ableism, or the rights of students with disabilities. Ableism should be added to curriculum to educate both students and teachers on how it impacts people with disabilities and society.
* Public school boards have an obligation to meet the individual needs of exceptional students. The move away from formal identification and the significant increase in the number of students without an exceptionality who have IEPs, is part of a trend away from diagnosis and toward individualized approaches.
* Moore Decision: In 2012, the Supreme Court of Canada handed down a landmark decision on disability rights. Students with disabilities are entitled to receive the accommodation measures they need and meaningful access to education. [**http://www.ccdonline.ca/en/humanrights/litigation/Moore-Case-Key-Findings-9Nov2012**](http://www.ccdonline.ca/en/humanrights/litigation/Moore-Case-Key-Findings-9Nov2012)
* There are continuing concerns regarding exclusion of students from co-op programs based on need for one to one support and/or transportation. Considering the findings from the Moore decision, would transportation not be considered the ‘ramp’ to access education in this example? (See the Moore decision for clarification)
* Undue Hardship: At what point would it be acceptable for a school board to claim undue hardship when accommodations are not met? As there are special grants for students that are not limited (ex. SIP, SEA grant), can school boards claim undue hardship?
* Duty to accommodate: Currently school boards use terms such as: IEP’s, modification, accommodation, alternative programs. It is unclear if these are all meaning the same thing, or if they are different. Further, where do behaviour, and/or health and safety plans fit with the duty to accommodate and do school boards have an obligation to provide transportation to enable students to access education including class trips and community based experiential learning.
* Accommodation: The way that this word is used and defined in human rights, and in education are different. Consistent use of the language and clarity in what those terms mean is very important.

1. **Recent developments in how “disability” is defined, and how, in some cases, the definition has expanded.**

Defining disability, particularly when it comes to providing students with special education needs with appropriate accommodations presents as a challenge. Currently, in education students are identified as ‘exceptional’. The five categories of exceptionalities are broad and poorly defined, despite the Ministry of Education’s attempts to update these definitions. Creating a single definition to capture all students is a daunting task and likely will not capture every need that a student may require while accessing services/supports at school. All students should have equitable access to curriculum, programs and services within their school. Supporting all students regardless of their label, in an individualized fashion, is critical to each student’s success.

Encouraging the discussion and education about ableism is important. When ableism is recognized it can lead to changes in attitudes for all involved in education, including teachers, administrators, and the students themselves. Continuing to tie the definition of disability back to the duty to accommodate, and the responsibility that we all have to support and accommodate all students to our best abilities is critical. The current definition of disability from Section 10 of the Code is problematic. It uses outdated terminology and negative language. Where a definition is required, it would be our suggestion to be broad and include past, present and perceived conditions as well as intermittent, episodic and transient conditions.  Further, it should recognize the diversity of individual needs and the broad continuum of child development and would recommend also including neurological and/or brain based disorders. By this, we do not mean mental health conditions, but diagnoses of Fetal Alcohol Spectrum Disorders (FASD), Acquired Brain Injuries and the like. In addition, looking at the issues of giftedness, which is not a disability, but is a recognized learning need in public schools, but not post secondary.

1. **The type of medical information a student requesting accommodation is required to provide to an education provider. Is a medical diagnosis (as distinct from medical information outlining a person’s needs and limitations) ever required?**

Over the past 10 years, there has been a significant increase in the number of students who are accessing special education programs and services who are not identified as exceptional. In 2014-15, school boards reported a total of 340,562 or 17% of all students as receiving special education programs and/or services. Of these students, almost half (162,029) have not been identified as exceptional. This raises the question of whether the categories of exceptionality are still needed, and whether an individualized approach, without categorization, would be better. That is every student, who requires special education programs and services would have an Individual Education Plan that documents, their strengths and needs, based on a variety of assessments, and their individual plan for learning. If the Ministry changed their approach to identification of individual needs, then medical information outlining a person’s needs and limitations may be required, but a medical diagnosis would not. Further, there are differences between the public school system and post secondary institutions in terms of their requirements of proof of disability and the type of documentation required to demonstrate disability. It is our position that having a medical diagnosis should not be a requirement to provide accommodation to a student. Accommodations should be based on the student’s individual strengths and needs. Operating from a diagnosis runs the risk of applying pre-conceived ideas of that student/disability, when we know that for most not all diagnoses are the same. This could reinforce and/or provoke ablest attitudes.

1. **The duty of education-providers, in some cases, to inquire about a student’s disability-related accommodation needs, even where the student has not made a formal accommodation request.**

One of the challenges in schools of using the “duty to accommodate” and identification of discrimination due to disability approach is that it continues from an ableism perspective. That is, the student is different from other learners and has a right to accommodations, in the form of special education programs and services. It is now more appropriate to move to a more inclusive approach, such as promoted in *Learning for All, A Guide to Effective Assessment and Instruction for All Students, Kindergarten to Grade 12 (2013)*.

If school boards were to take a “Learning for All” approach, then the onus would be on the board to provide programs and services that are designed on a Universal Design for Learning approach, using differentiated instruction, to meet most student needs. If individual learning profiles were developed for all students, provision of special education programs and services (including accommodations) would be determined on an individual basis that might not require the student to self identify as having a disability, but does not remove their right to self identify as having disability related accommodation needs.

1. **How the ground of disability “intersects” with other Code grounds, and how this intersection influences the way that a student may experience discrimination and harassment.**

Additional factors that may intersect with disability include culture, race and gender identity, sexual orientation. For example, a student who identifies as First Nations or Black, or as Queer or Transgender, faces additional challenges at school.

The Ministry of Education has developed an equity and inclusion strategy and, because of the strategy, every school board has:

* an equity and inclusive education policy
* a religious accommodation guideline in place.

The equity and inclusive strategy recognizes the diversity of students and the need to identify and eliminate systemic barriers that may limit engagement by students, parents and the community in board and school activities.

In many of the school board policies, there is a focus on professional development, and inclusive instructional and assessment practices and these are areas that are likely to have a significant impact on student inclusion and learning. It may be appropriate to encourage school boards to review their policies and board activities from the view of students who face multiple challenges, for example, when their disability intersects with other barriers related to their gender, race or culture.

1. **When, if ever, the right to accommodation must be balances with the rights of other people.**

Considerations for both students and staff need to be weighed when providing accommodations. The rights of staff and staff safety has been consistently highlighted in the media over the last several years. Finding the balance between staff safety and a student’s right to education is challenging. In many cases, having the right level of training and education about the student, to understand their individual strengths and needs can help to mitigate times of escalation in the school environment with students who have difficulty with emotional regulation.

Another area that has proven to be challenging is in the area of Service Animals in Schools. Service animals are used not only to support those who are blind/low vision or deaf/hard of hearing, but for many other purposes including companion, therapy, medical alert/response and a wide range of other purposes. We are seeing more requests for service animals (not just dogs), for a broader range of needs. Service animals are used to support people with a variety of disabilities. There are risks with any animal, even those that are well trained and experienced. Introducing service animals into the classroom, especially with young children, should be carefully planned and supported.

The rights of the student with a disability should be considered against the rights of the other students, and staff at the school. This means that each case should be considered individually within a human rights framework. We defer to existing policy on competing rights: <http://www.ohrc.on.ca/en/policy-competing-human-rights> .

In summary, student’s needs should be at the forefront, regardless of diagnosis or label. Understanding that for some their needs may be lifelong, while for others they will be intermittent and/or recurring conditions. No two students are the same, and so, an individualized approach is best. Supporting all students, by recognizing their strengths and needs should be the approach to ensuring an equitable and inclusive education system. This model of service delivery certainly comes with its challenges. Providing safe and caring environments for students and staff while meeting the needs of all is not an easy task. Ensuring that all students can fully participate if able in all elements of their educational career is critical to making their time in school meaningful and striving for excellence. In the current version of the OHRC’s Guidelines on accessible education, under the Accommodation process section you discuss the importance of Timeliness. Timely access to accommodation, curriculum and services is critical to all students. Access delayed, is access denied. We strongly encourage this topic to remain in the revised version of the guidelines and commend all of the hard work the OHRC puts into creating and revising this document. The Guidelines are used often and provides service providers, advocates and parents with a great tool to advocate on both an individual and systems level.

Thank you for your review of our feedback, we encourage you to connect with us should you have further questions or would like our input in future steps of the process. Once again, we want to stress how timely this update is and encourage the collaboration between the OHRC, Ministry of Education and Accessibility Directorate to explore how we can create a strong accessibility standard for education.

Regards,



Katie Muirhead, Chair  
PAAC on SEAC