

THE OPPORTUNITY TO SUCCEED

ACHIEVING BARRIER-FREE EDUCATION FOR STUDENTS WITH DISABILITIES

CONSULTATION REPORT

Ontario Human Rights Commission
180 Dundas Street West, 7th floor
Toronto, Ontario, M7A 2R9
www.ohrc.on.ca

TABLE OF CONTENTS

EXECUTIVE SUMMARY	5
Background	5
The Report	5
Moving Forward	7
INTRODUCTION	8
HUMAN RIGHTS LAW AND POLICY IN ONTARIO	10
REPORT SCOPE AND OBJECTIVES	12
ELEMENTARY AND SECONDARY EDUCATION.....	13
Overview	13
Access to Education.....	14
<i>Physical Accessibility</i>	15
<i>Access to Accommodation</i>	16
<i>Timeliness</i>	20
<i>Safe Schools Act</i>	22
Disability and Other Forms of Discrimination.....	25
Negative Attitudes and Stereotypes.....	27
Labelling.....	30
Accommodation Process	33
Appropriate Accommodation	36
Undue Hardship Standard.....	40
POST-SECONDARY EDUCATION.....	45
Overview	45
Access to Education.....	46
<i>General Issues</i>	46
<i>Funding Issues</i>	48
Disability and Other Forms of Discrimination.....	55
Negative Attitudes and Stereotypes.....	56
Accommodation Process	57
<i>Background</i>	57
<i>Access to Information</i>	57
<i>Dispute Resolution</i>	58
<i>Confidentiality</i>	59
Appropriate Accommodation	60
<i>Defining Appropriate Accommodation</i>	60
<i>Access to Accommodation</i>	63
Undue Hardship Standard.....	64
ROLES AND RESPONSIBILITIES	66
Government.....	66
School Boards	68
Primary and Secondary School Educators	68

Post-Secondary Institutions	69
Students with Disabilities	70
The Ontario Human Rights Commission	71
APPENDIX A: SUMMARY OF ACTIONS REQUIRED	73
School Boards and Schools	73
Post-Secondary Institutions	74
Government.....	75
<i>General</i>	75
<i>Primary and Secondary Levels</i>	75
<i>Post-Secondary Level</i>	77
Other	78
APPENDIX B: ORGANIZATIONS THAT PROVIDED INPUT	79
APPENDIX C: LIST OF ACRONYMS.....	81
ENDNOTES	81

EXECUTIVE SUMMARY

Background

Education is an international human right essential to the life of an individual and to a community as a whole. Education provides opportunities for personal, social and academic development and is important for future employment and integration in society. The school setting is one of the first places that children learn to relate to and interact with one another. It is often in relation to their peers that children begin to develop a perception of themselves and of the world around them. As such, a student's experience in school can have a major effect on his or her self-image and self-esteem, and on his or her development in later life.

In Canada, education is recognized and legislated as a fundamental social good. A publicly-funded education system, accessible to all, is recognized as a core responsibility of government. At the international level, various United Nations conventions recognize the importance of education to persons with disabilities, including the *Covenant on Economic, Social And Cultural Rights*, the *Convention on the Rights of the Child*, and the *Declaration of the Rights of Disabled Persons*.

The Ontario *Human Rights Code* sets out the principle that each person should feel a part of the community and be able to contribute fully to the development and well-being of the community and the Province. The *Code* guarantees the right to equal treatment in education, without discrimination on the ground of disability, as part of the protection for equal treatment in services. This protection applies to elementary and secondary schools, colleges and universities, both public and private.

In July 2002, the Ontario Human Rights Commission released *Education and Disability: Human Rights Issues in Ontario's Education System*, a consultation paper which identified human rights issues in education. The Commission invited feedback from interested parties, through written submissions and participation in public hearings, on the issues identified in the consultation paper, and on other human rights issues in education. The response was overwhelming and came from a wide range of interested parties.

The Report

The Opportunity to Succeed: Achieving Barrier-free Education for Students with Disabilities is the final Report on the Commission's extensive research and consultation. The Report represents an overview of the feedback received from consultees from across the province. It canvasses human rights issues that arise in the provision of education to students with disabilities, it outlines actions required by parties to the accommodation process to promote compliance with human rights law and policy and sets out the Commission's own commitments in this regard.

Based on the Commission's findings, it is apparent that many students with disabilities do not have equal access to educational opportunities in Ontario, either at the primary and secondary, or at the post-secondary level. The key barriers are inadequate funding,

physical inaccessibility, cumbersome and time-consuming accommodation processes, negative attitudes and stereotypes, and a lack of understanding of the rights and responsibilities of all parties under the *Code* and Commission policy.

Accommodation is not always provided in a timely manner. It is often insufficient, and sometimes, is not provided at all. There are delays at many stages of the accommodation process. For example, consultees reported a large backlog in the processing of claims for special education funding, long waiting lists for professional assessments, and delays in the provision of special education programs and services. In some cases, disputes about accommodation have caused students to lose substantial amounts of time in school. Children and youth cannot afford to wait for accommodations that will provide them with the opportunity to access education services equally. Educational institutions have a responsibility to deal with accommodation effectively and quickly as educational opportunities delayed can have serious and permanent effects.

Every student is unique. All students have particular strengths, needs, and goals. Most students will require support at one time or another in order to reach their potential. Students with disabilities are individuals first and foremost, and should be treated as such. Blanket approaches to accommodation that rely on categories, labels and generalizations will not work. For example, rigid application of suspension and expulsion policies that do not take into account a student's individual circumstances and are implemented with stereotypical assumptions run the risk of having a disproportionate and discriminatory impact on students with disabilities and other individuals protected by the *Code*.

Not all students with disabilities who experience discrimination will do so in the same way. For example, students with disabilities may also be members of other historically disadvantaged groups. The discrimination they experience may be based on more than one ground, and these grounds may intersect producing unique experiences of discrimination. In order to fully recognize and account for the complex ways in which many people experience discrimination, an individual approach to discrimination analysis and accommodation assessment is needed.

The accommodation of students with disabilities is a shared responsibility. Everyone – educators, school staff, government officials, school boards, parents and students themselves – must take responsibility for becoming informed about disability and education issues to ensure that students with disabilities can count on a welcoming and inclusive environment. Everyone needs to work together to ensure equal access to education for students with disabilities. When it comes to ascertaining the needs of a student for the purposes of developing an Individual Education Plan, for example, the student's principal, teachers, and any special education professionals with whom the student has worked should co-operate with the student's parents and the student, where appropriate, to devise the most effective plan. Everyone has an interest in providing all students with the opportunity to reach their potential.

The Ministry of Education must co-operate with school boards and schools to develop more effective mechanisms to monitor the progress of students with disabilities and the effectiveness of specific accommodation measures. Likewise, the Ministry of Training,

Colleges and Universities must work together with universities and colleges to develop better systems of accountability in accommodating students with disabilities.

It should be remembered that while there are costs associated with providing certain forms of accommodation and support to students with disabilities, there are lifelong costs to not providing these supports. The *Code* requires education providers to accommodate students with disabilities up to the point of undue hardship. Participants in the consultation repeatedly identified inadequate funding as a serious barrier for students with disabilities. Part of the duty to accommodate includes providing the resources that children and youth with disabilities need to have the opportunity to succeed.

Moving Forward

The Report outlines the actions which schools and school boards, post-secondary institutions, government, and other responsible parties are expected to take to address these issues. These actions are designed to address the concerns raised by participants in the consultation, to promote compliance by education providers with their legal obligations under the *Code*, and to ensure that students with disabilities are receiving equal treatment in the context of educational services. As well, the Commission has committed to monitoring progress on these issues, promoting understanding and awareness by communicating with parties, developing educational tools, and undertaking public education activities.

In order to assist parties to understand their roles and responsibilities, the Commission will release *Guidelines on Accessible Education* as a companion piece to this Report. The *Guidelines* will rely on key principles outlined in the *Code* and the Commission's *Policy and Guidelines on Disability and the Duty to Accommodate* and apply them to the education context. The *Guidelines* will discuss disability, examine *prima facie* discrimination because of disability, identify the parameters of the duty to accommodate, assess undue hardship, and provide suggestions for accommodation planning in the education context.

It is the Commission's expectation that this Report will promote dialogue among individuals and institutions involved in Ontario's school systems and will result in progressive steps being taken towards ensuring that all students with disabilities are provided with the opportunity to succeed in school.

INTRODUCTION

The issue of accessible education for persons with disabilities has generated much attention in recent years. When the Ontario Human Rights Commission (the “Commission”) conducted its 1999 consultation on disability and the duty to accommodate, as part of the development of its *Policy and Guidelines on Disability and the Duty to Accommodate*, it heard many concerns from consultees specifically relating to the education system.

In its 2001 Annual Report, the Office of the Provincial Auditor noted several issues of concern related to special education programs and services.¹

Parents, students, educators and community groups have continued to stress that there are serious problems in the special education system, problems which, in effect, are limiting the access of students with disabilities to educational services. Increasingly, individuals are turning to the Commission’s complaints procedure for redress.

Pursuant to its function to inquire into and promote an understanding of human rights matters, the Commission decided to launch a public consultation on disability issues in Ontario’s education system. The consultation was initiated in July 2002 with the release of a Consultation Paper entitled *Education and Disability: Human Rights Issues in Ontario’s Education System*. The Consultation Paper identified a number of issues regarding students with disabilities in Ontario and invited interested parties to make written submissions on these and other human rights issues relating to disability and education.

Information about the consultation process was sent to more than 300 stakeholders, posted on the Commission’s Web site and advertised in newspapers. In total, we received approximately 125 written submissions. Those who made submissions included community organizations, school boards, Special Education Advisory Committees, parents², students with disabilities, educators, colleges, universities, consultants, unions, and advocacy groups. In addition, a panel chaired by Chief Commissioner Keith Norton gathered further information over two weeks of public consultation sessions in November 2002. Over fifty individuals and organizations made presentations in North Bay, Ottawa, Hamilton and Toronto.

The Commission would like to take this opportunity to thank everyone who contributed to this process. We wish to acknowledge the substantial time and effort that individuals and organizations took to prepare written submissions and to participate in the public consultation sessions. We would also like to express our sincere appreciation to the parents who came forward, often with great difficulty, to share their experiences and the experiences of their children in the education system. The feedback we received was highly informative and invaluable in the preparation of this Report and will continue to be crucial in the future work that the Commission will undertake in the area of disability and education.

It is our intention and hope that the Commission's work in this area promotes a shared understanding of the roles and responsibilities of individuals and institutions involved in Ontario's school systems to respect, protect, promote and fulfill the right of students with disabilities to enjoy an accessible education. We also hope that this Report will promote dialogue amongst the parties involved in the accommodation process and encourage timely dispute resolution in an informal manner at a local level.

HUMAN RIGHTS LAW AND POLICY IN ONTARIO

The Ontario *Human Rights Code*³ (the “Code”) states that it is public policy in Ontario to recognize the inherent dignity and worth of every person and to provide for equal rights and opportunities without discrimination. The *Code* aims at creating a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and feels able to contribute to the community.

Section 1 of the *Code* affirms the right to equal treatment in services without discrimination because of disability. Services include the provision of education. This protection covers publicly-funded elementary and secondary schools, private schools, and colleges and universities (both public and private). It also includes special schools which exist in the province such as hospital schools, care and treatment centres, and schools in correctional facilities, as well as provincial schools which are residential schools geared to specific exceptionalities, for examples blind and deaf, deafened and hard of hearing students.

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”)

It is the Commission’s policy position that “disability” should be interpreted broadly. It includes present and past conditions, as well as perceived disabilities.

The *Code* also makes it clear 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*.⁴

Section 17 of the *Code* sets out the duty to accommodate. 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.

The Commission's *Policy and Guidelines on Disability and the Duty to Accommodate*⁵ ("*Disability Policy*"), released in March 2001, sets out the Commission's key policy positions in this area, including:

- a definition of disability that recognizes the impact of social handicapping⁶;
- 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 *Disability Policy*, form the basis of the OHRC's approach to issues of disability and the duty to accommodate.⁷ It was not the intent of the Commission's consultation, nor is it the intent of this Report, to re-evaluate or reconsider these principles. Rather, it is the Commission's aim, both in this Report and in the forthcoming *Guidelines on Accessible Education*, to clarify the application of these principles in the education sector.

REPORT SCOPE AND OBJECTIVES

The Commission has a broad mandate to deal with issues of discrimination. Under section 29 of the *Code*, the Commission is specifically empowered to forward human rights policy; promote an understanding, acceptance of and compliance with the *Code*; provide public information, education and research aimed at eliminating discrimination; examine and review statutes, regulations, programs and policies and make recommendations on any provision, programs or policy that may be inconsistent with the *Code*; initiate investigations into problems and encourage and co-ordinate plans, programs and activities to reduce or prevent such problems; and, encourage public and private organizations to undertake programs to alleviate discrimination.

It is pursuant to this mandate that the Commission has undertaken this review. This Report is intended to be a comprehensive examination of issues that affect the right of students with disabilities to access education without discrimination. While all comments and input received were given equal consideration in the preparation of this Report, we regret that we were not able to address or make a recommendation on every issue raised. In keeping with the Commission's mandate, this document focuses on the human rights aspects of educational services, and what can properly be considered "discrimination" within the meaning of human rights law and policy.

The Report provides an in-depth picture of human rights issues relating to disability and education in the province of Ontario. It outlines "Actions Required" of key players in the education system to address the practices and attitudes that limit the ability of students with disabilities to access education equally. It also includes specific Commission commitments which are steps that the Commission will take to help combat discrimination against students with disabilities. The Commission's analysis and recommendations are informed by the comprehensive input received from stakeholders throughout the course of the consultation.

The first part of the Report deals with issues at the elementary and secondary school levels. The second part focuses on issues at the post-secondary level of education. Both of these sections examine access to education, negative attitudes and stereotypes, appropriate accommodation and undue hardship, roles and responsibilities in the accommodation process, discrimination against persons with disabilities on multiple grounds, and funding issues. The elementary and secondary section also looks at human rights issues arising out of practices and procedures governed by the *Education Act* and its regulations. These issues include the identification and placement process, individual education plans, and the Intensive Support Amount funding scheme.

ELEMENTARY AND SECONDARY EDUCATION

Overview

In the 2001-02 school year, over 2 million students attended publicly-funded elementary and secondary schools in Ontario⁸. Publicly-funded elementary and secondary schools are governed by the *Education Act*⁹ (the “Act”) and its accompanying regulations. These schools are administered by local school boards throughout the province. Currently, there are 72 district school boards in Ontario: 31 English-language public boards, 29 English-language Catholic boards, 4 French-language public boards, and 8 French-language Catholic boards¹⁰.

Under the *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 fees¹¹. The Ministry is therefore responsible for requiring school boards to implement procedures for identifying student needs, and for setting standards for identification procedures.

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.”¹²

Under Regulation 306 to the *Act*, school boards are required to provide special education programs and services to exceptional students. As part of this requirement, each school board must prepare a special education plan, to be reviewed annually.¹³ School boards are also required to establish Identification, Placement and Review Committees and Special Education Appeal Boards.¹⁴

Under the *Ontarians with Disabilities Act*,¹⁵ the Ministry of Education, as well as school boards, are required to prepare, update and make public accessibility plans that address the identification, removal and prevention of barriers to people with disabilities.

In the 2001-02 school year, 176,359 students at the elementary level and 100,735 students at the secondary level received special education programs and/or services in the publicly-funded school system.¹⁶

Prior to 1998, the public education system was financed by a combination of government grants and money raised by school boards through local property taxes. In 1998, the provincial government introduced a new funding formula for Ontario’s publicly-funded school system. Under the new system, school boards no longer have the power to generate resources through taxation, and therefore depend on government grants to run the education system.¹⁷

Throughout the consultation, stakeholders stressed that many of the problems experienced by students with disabilities in accessing education are due to funding shortfalls. For instance, the Ontario Public School Boards’ Association describes inadequate funding as “the foremost barrier to equal access to educational opportunities confronting students with disabilities.”

In 2002, the provincial government established the Educational Equality Task Force, chaired by Dr. Mordechai Rozanski, to conduct an independent review of the education funding formula. As part of this review, the Task Force examined the current approach to funding special education and concluded that increased levels of funding are necessary to address problems in the system. The Task Force released its report, entitled *Investing in Public Education: Advancing the Goal of Continuous Improvement in Student Learning and Achievement* (the “Rozanski Report”), in December 2002.¹⁸

Students may also receive elementary and secondary education through private schools.¹⁹ Private schools are operated independently and do not receive direct funding from government.²⁰ In 2001-02, 112,653 students attended private schools in Ontario. Of this number, 3,066 students received special education programs and/or services.²¹

In addition to the *Education Act* and its regulations, the Ministry of Education has developed numerous policy statements relating to the delivery of special education. Despite this extensive framework, stakeholders continue to express concerns about the accessibility and equality of educational services for students with disabilities. In many cases, stakeholders report that special education practices and procedures in school settings at the local level are not consistent with the Ministry of Education’s own directives, and that this inconsistency is resulting in human rights violations.

The Ministry of Education has the authority to set its own education policies. At the same time, since the *Code* has primacy over all other pieces of legislation in Ontario (unless otherwise stated), these policies, as well as education practices and procedures, must be consistent with the *Code*. Under the *Code*, education providers in both the publicly-funded system and in private schools have a legal duty to accommodate students with disabilities up to the point of undue hardship.

Access to Education

Barriers to education can take a variety of forms. They can be physical, technological, systemic, financial, or attitudinal. They can arise from an education provider’s failure to make available a needed accommodation, or to provide one in a timely manner.

In *Eldridge v. British Columbia (Attorney General)*, the Supreme Court of Canada found that “once the state does provide a benefit, it is obliged to do so in a non-discriminatory manner.... The principle that discrimination can accrue from a failure to take positive steps to ensure that disadvantaged groups benefit equally from services offered to the general public is widely accepted in the human rights field.”²² It is the Commission’s policy position that this comment, while made in the context of health care, applies equally to the provision of educational services. As the Commission’s *Disability Policy* states, “Governments have a positive duty to ensure that services available to the general public are also available to persons with disabilities.”²³

In order for persons with disabilities to receive equal treatment in education, they must have equal access to educational opportunities. The duty to accommodate includes identifying and removing barriers that impede the ability of persons with disabilities to

access educational services. The Commission's *Disability Policy* affirms the duty of education providers to structure their programs and policies so as to be inclusive and accessible for persons with disabilities, and to take an active role in the accommodation process.

Physical Accessibility

Throughout the consultation, the Commission heard that students with disabilities continue to experience physical barriers to educational services. As stated by the KIDS' Coalition: "Students may be unable to attend their local school due to lack of physical accessibility. Many schools are multi-level and the installation of elevators may be impractical or too costly. Parts of the school may be inaccessible due to lack of ramps, heavy doors, site elevation or playground features. Many schools do not have washrooms suitable for students with disabilities (wide doors, higher toilets, grab bars, change tables, hoists or lifts, etc.)"

The Elementary Teachers' Federation of Ontario voiced similar concerns: "Ramps, elevators, washrooms, lab and counter tops which are appropriate for students with disabilities must be included in the design of the facility. This gives the message that inclusion is being taken seriously. In order for integration and full participation to occur, many existing school buildings must be altered. This may take the form of moving classrooms, building an elevator or perhaps a ramp. Currently, procedures do not exist that can readily accommodate these changes. Students are often required to relocate to another accessible facility rather than attend their own local school."

It is the Commission's policy position, as outlined in the *Disability Policy*, that "when constructing new buildings, undertaking renovations, purchasing new computer systems, launching new Web sites, [or] setting up new policies and procedures... design choices should be made that do not create barriers for persons with disabilities."²⁴ This approach is referred to as "design by inclusion" or "inclusion by design".

Where barriers already exist, the duty to accommodate requires education providers to make changes up to the point of undue hardship to provide equal access for persons with disabilities. If, after making the required changes, persons with disabilities are still unable to participate fully, education providers have a duty to accommodate any remaining needs up to the point of undue hardship.

The Ontario *Building Code Act*²⁵ governs the construction of new buildings and the renovation and maintenance of existing buildings. It has become clear to the Commission that the accessibility requirements set out in the *Building Code* do not always result in equal access to persons with disabilities as required by the *Human Rights Code*. Those responsible for providing access often rely only on the requirements of the *Building Code* without due consideration of their obligations under the *Human Rights Code*. However, the *Human Rights Code* prevails over the *Building Code* and service-providers may be vulnerable to a human rights complaint to the extent that their premises continue to fall short of the requirements of the *Human Rights Code*. Reliance on relevant building codes has been clearly rejected as a defence to a complaint of discrimination under the *Human Rights Code*.²⁶

In March 2002, the Commission provided extensive input to the Ministry of Municipal Affairs and Housing on the barrier-free access requirements of the *Building Code*.²⁷

The Commission's submission outlined ways in which the *Building Code* can incorporate human rights principles, and emphasized the need to achieve greater harmonization between the two *Codes*.

ACTIONS REQUIRED:

- (1) That the Ontario *Building Code* be amended to reflect the legal requirements set out in the *Human Rights Code*.
- (2) That, irrespective of when the *Building Code* is amended, the Ministry of Education, schools, and school boards comply with the requirements of the *Human Rights Code* and the principles outlined in the *Disability Policy* when constructing buildings, making renovations, and designing programs and services.

Access to Accommodation²⁸

Human rights law and policy establish that education providers have a duty to accommodate students with disabilities to the point of undue hardship. Without needed accommodations, students are often unable to access educational opportunities equally.

As previously mentioned, under the *Education Act*, the Ministry of Education is responsible for ensuring that all exceptional pupils in Ontario have available to them appropriate special education programs and services. When implementing a placement decision for a student who has been identified as exceptional, a school board is required to notify the student's principal of the need to develop an Individual Education Plan ("IEP") for the student.²⁹ An IEP is a working document that includes 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. In developing the IEP, the principal is required to consult with the student's parent and with the student where he or she is 16 or older.³⁰ If used properly, the IEP is a type of accommodation plan for the student.

During the consultation process, participants described many problems in the IEP process. There were reports of long waiting lists for professional assessments, delays in the preparation of IEPs, IEPs not accurately reflecting a student's needs, and IEPs being ignored entirely. The 2001 Annual Report of the Provincial Auditor confirms these reports. It concluded that IEPs "met neither the requirements of Regulation 181/98 under the *Education Act* nor the suggestions for good practice in the Ministry's *Individual Education Plan (IEP) Resource Guide (1998)*."³¹ The Commission was told that, as a result of these problems, many students with disabilities are not receiving the accommodation they need to participate fully in the education curriculum and in school activities.

The Marsha Forest Centre reported: "It is routine that students with disabilities are required to begin school each year after other students do so, that some are told to

remain at home when schools find themselves unable to provide necessary supports for various periods of time, and that others do not attend school due to disputes with schools over placement and supports.”

Community Living London made similar observations: “To provide inclusive educational opportunities for children with intellectual disabilities, there must be classroom supports. The special education teacher must be given the tools to get the job done. There is a need for Educational Assistants to provide supports to students that will facilitate an environment conducive to learning...The need for in-class supports is urgent.”

In order to have the opportunity to access education equally, students with disabilities may require various forms of accommodation. These accommodations may include: extra support in the classroom, adaptive technology, learning materials in alternative formats (e.g. Braille), transportation to school, extended test times, curriculum modifications, and assistance from specialized professionals (namely, psychologists, psychometrists, social workers, counsellors, educational assistants, speech and language pathologists, sign language interpreters, mobility instructors, and other professionals and paraprofessionals trained to work with students with special needs).

Participants in the consultation expressed concerns about the lack of alternative formats available to students whose disabilities may interfere with their ability to access print materials. Students with low vision or visual impairments and certain types of physical disabilities often require textbooks and other curriculum materials in alternate versions. In 2000, the Task Force on Access to Information for Print-Disabled Canadians published a report entitled *Fulfilling the Promise: Report of the Task Force on Access to Information for Print Disabled Canadians* which contained recommendations designed to improve access to information for the print-disabled community in Canada.³² Yet, despite this work, consultees reported long delays in the transcription of textbooks, for example, with the result that students were left without the necessary course materials at the start of the school year.

The Commission heard of instances in which assistive devices (for example, computer access technology, adaptive software, etc.) needed to allow students to access the educational curriculum were delivered to schools, only to be left sitting unused in boxes because nobody in the school knew how to use them. The recently-released final report of the Learning Opportunities Task Force (LOTF) supports these accounts. In a key finding related to the access of students with learning disabilities to post-secondary education, the report concluded that the majority of pilot students “had no access in secondary school to assistive technology or other accommodations that would enable them to succeed in their studies.”³³

The Commission was told that students are not receiving the accommodations they need when writing the Grade 10 literacy test.³⁴ Students must pass in order to graduate, and in the 2001-2002 school year, 60% of students identified as having special needs failed the test. The failure rate for students without special needs for the same period was 25%.³⁵ The Education Quality Accountability Office published a *Guide for Accommodations, Special Provisions, Deferrals and Exemptions* which provides for the accommodation of students with disabilities.³⁶ However, participants told the

Commission that this *Guide* is not being followed in the school setting. For instance, LOTF reported that “many students do not have much needed accommodations for the EQAO testing listed in their IEP, a pre-requisite for accommodation use during this testing. Many other students find that when they get to the test location the accommodation that they expected to utilize is not available after all, is out of order, or there is no one to help them with using it. Others have not received prior training in the use of the accommodation, which is a particularly problematic situation for the use of adaptive technology.” LOTF’s final report recommended that when taking the test, students must be guaranteed access to the requisite accommodations listed in their IEP. And, where students fail the test, they must have access to diagnostic assessments to determine if a learning disability exists, and to review whether the student requires additional or differentiated teaching and/or accommodations.

The Commission was very concerned to hear from consultees that students with disabilities, particularly students with learning and cognitive disabilities, are doing poorly on the test, at least in part, because of the failure of the special education system to provide them with the accommodations they needed in the grades leading up to Grade 10.

It has also come to the Commission’s attention that educators in Ontario are not always complying with human rights principles when administering other types of tests. For example, private schools in Ontario often require students to write the Secondary School Admission Test (SSAT) as an admission requirement. The Online Student Guide to the SSAT indicates that where a student received “special accommodation”, the school score reports will indicate that the student was tested under “Non-standard conditions.” Educators are not only required to accommodate students with disabilities up to the point of undue hardship, they are also required to maintain the confidentiality of these students. Distinguishing the score results of a student who received accommodation has the potential of revealing the existence of a disability and exposing that student to discrimination.

A number of organizations commented on the shortage of professional services for students with disabilities. In its October 2002 Report, People for Education³⁷ estimated that in Ontario’s elementary schools, there are 39,700 students with disabilities on waiting lists for special education services. The Report states “Access to the support services of the psychologists, social workers and speech pathologists who work with special education students has decreased dramatically over the five years [1997-2002] of our study.”³⁸

In its 1993 Annual Report, the Office of the Provincial Auditor of Ontario recommended that the Ministry of Education establish minimum levels of support staff required in integrated classrooms.³⁹ In its 2001 Annual Report, the Provincial Auditor concluded that this recommendation had not been implemented. Further, when interviewed for the 2001 Annual Report, many educators reported that teacher assistants and experienced special education resource teachers continue to be in short supply. In all of the boards visited by the Office of the Provincial Auditor, there were backlogs for special education professional services. Further, the Provincial Auditor noted that the backlogged cases were dealt with according to a triage system with the less “serious” cases having a

waiting period of between six to twelve months, if they were even dealt with at all. The 2001 Annual Report concluded that “service decisions are being made based on budgetary considerations, and there is no basis for either school boards or the Ministry [of Education] to evaluate the appropriateness of the service cut-off points currently in place.”⁴⁰

The Commission heard from consultees that current funding levels do not allow school boards to offer competitive salaries to specialized special education professionals, particularly given that these services are very much in demand. The Commission learned that parents who can afford to will often pay large amounts of money to by-pass waiting lists for special education services. In most cases, however, the result is that students are forced to go without the supports they need. Increasingly, it is left up to teachers themselves to assist students, often without the proper training or expertise.

Participants made it clear that the lack of professional services is particularly problematic in rural and remote areas. The Commission heard that the situation is most acute in South-western and Northern Ontario, and is equally problematic at both the primary and secondary school levels. The 2001 Annual Report of the Provincial Auditor reported similar findings, concluding that “significant provincial discrepancies in the accessibility of services was creating an inequitable situation depending upon the jurisdiction in which a family was living.”⁴¹

Consultees also reported that students with disabilities, especially in rural areas, experience difficulties with transportation to and from school. ARCH (the Legal Resource Centre for Persons with Disabilities) highlighted examples of transportation policies that may raise human rights issues, for example, busing companies that have “no food or drink” rules and fail to accommodate students who may have disabilities that require them to eat or drink regularly. Others expressed concerns that the funding formula does not provide boards with sufficient funding for the transportation of students with disabilities. The Education Equality Task Force, hearing similar concerns from its consultees, recommended that the Ministry of Education develop a transportation policy for students with special needs.⁴²

The Commission also heard information from consultees that indicates that some private schools may not understand their obligations with respect to students with disabilities, or may be failing to respect them. The Commission heard from parents that private schools which have turned away children with disabilities on the basis that the school “is not in the business of providing these types of services”, have insisted that any accommodations be funded by the parents, or have refused to enter into the accommodation process. Private schools, like publicly-funded schools, are bound by the *Code*. This includes the duty to provide equal services to students who have or are perceived to have disabilities, and to accommodate the needs of students with disabilities to the point of undue hardship.

ACTIONS REQUIRED:

- (1) That the Ministry of Education review and consider the recommendations contained in the report of the *Task Force on Access to Information for Print-Disabled Canadians*, particularly item 15 which recommends that governments at all levels use “the force of procurement” to promote the adoption of universal design standards for accessibility. The report recommends that only materials complying with such standards should be purchased.
- (2) That school boards and schools decide their curriculum book lists in a timely fashion so that alternative formats may be arranged for students with disabilities.
- (3) That publishers provide electronic versions of school textbooks to school boards as part of their duty to accommodate persons with disabilities in the provision of services.
- (4) That school boards and schools make all classroom materials (handouts, *etc.*) available in alternative formats in a timely manner.
- (5) That the Ministry of Education ensure that educators receive proper training in the use of assistive devices.
- (6) That the Ministry of Education develop a system to better monitor the application of its *Guide for Accommodations, Special Provisions, Deferrals and Exemptions* in the administering of the Grade 10 literacy test, and that it ensure that students are accommodated in accordance with the *Code*.
- (7) That the Ministry of Education establish programs to recruit specialized professionals currently under-represented in the special education system. That this initiative provide incentives to encourage special education professionals to make their services available in rural and remote parts of Ontario.
- (8) That the Ministry of Education follow the recommendation of the Education Equality Task Force to “develop a funding policy for the transportation of students with special needs”⁴³ and that this policy be in compliance with the *Code*.
- (9) That private schools be required to submit accessibility plans to the Ministry of Education demonstrating efforts to the point of undue hardship to ensure equal access to their services for persons with disabilities.

Timeliness

Throughout the consultative process, the Commission heard many concerns about the time it takes for students with disabilities to receive the accommodations they need. Based on the feedback received, it appears that delay is occurring at many stages in the accommodation process.

Consultees told the Commission that students are waiting up to eighteen months for the professional assessments they need in order to be accommodated. In their 2002 Report, People for Education made similar observations and concluded that “moderately-needy” students are ending up on long waiting lists for special education services. The report showed that since 1999-2000, the number of students on special education waiting lists has risen by 14 per cent, for a total of nearly 40,000 students.

About 60 per cent of these students are waiting for assessments.⁴⁴

Consultees described long delays at various stages of the Identification, Placement and Review Committee process,⁴⁵ and in the preparation and implementation of IEPs. The Commission heard that even where a student has been assessed, identified and a placement chosen, the student might have to wait a significant period of time before a classroom space becomes available. Then, if parents dispute the identification or placement of their child, there are often considerable delays in the appeals process.

The Commission was also told that a major backlog in the processing of Intensive Support Amount⁴⁶ applications is also resulting in students having to wait long periods of time for accommodation. In its submission, CUPE (Canadian Union of Public Employees) reported: “Many complaints have been registered about the huge amount of paperwork involved in the ISA claims-approval process, and the boards have struggled to meet the administrative demands. Frontline workers are being diverted from the classroom in order to comply with the Ministry’s demands... Moreover, getting *re-assessments* of students is all but impossible given the waiting lists and limited resources.” The Rozanski Report recommended that the Ministry of Education devise an approach to ISA funding that reduces the administrative burden of the current ISA claims process.⁴⁷ The ISA funding scheme is currently under review.

The Centre for Independent Living in Toronto expressed the view that “accommodation delayed is accommodation denied.” Justice for Children and Youth described the effect of delayed accommodation on students as follows: “Children experience time differently than adults, for the disabled child a short time in an inappropriate setting where they cannot possibly succeed can seem like a lifetime.”

Participants told the Commission that other reasons for delays in the special education system include: shortages of specialized staff, overworked teachers, an overly legalistic appeals process, and, in some cases, school staff not being sufficiently apprised of their accommodation obligations, or, not taking these obligations seriously enough. Of particular note was the number of participants who attributed delays and diminished service in general to a lack of adequate funding. Participants stated that, without appropriate funding, delays are inevitable.

Canada has ratified international human rights instruments that affirm the importance of education in the life of a child. Article 28 of the United Nations *Convention on the Rights of the Child*⁴⁸ 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*⁴⁹ affirms the right of persons with disabilities to education.

In order to access educational services equally, students with disabilities require that accommodation be provided promptly. The Commission’s *Disability Policy* states that accommodation providers are required to “grant accommodation requests in a timely manner.”⁵⁰ Delays in the provision of accommodation have the potential to directly

impede a student's ability to access and participate in the educational curriculum. As such, unreasonable delays may constitute discrimination under the *Code*, and the Ministry of Education and school boards may be vulnerable to having a human rights complaint filed against them.

ACTIONS REQUIRED:

- (1) That the Ministry of Education review special education practices and procedures to determine ways in which delay can be minimized.
- (2) That the Ministry of Education review the adequacy of resources provided to school boards to ensure that school boards are able to provide timely access to appropriate accommodation for all students with disabilities.
- (3) That school boards and schools review local level practices to determine ways in which accommodation can be provided in a more timely manner.
- (4) That the Ministry of Education and school boards review whether students are being required unnecessarily to obtain professional assessments in cases where disability-related needs are already known and established. That, where possible, the Ministry of Education and school boards provide accommodation to students without requiring professional assessments.
- (5) That school boards and schools provide interim accommodation for students pending the completion of professional assessments.

Safe Schools Act

Many participants in the consultation provided comment on the discriminatory effects of the *Safe Schools Act* on students with disabilities.

In 2001, the *Safe Schools Act* (Bill 81) amended the *Education Act* to add Part XIII, "Behaviour, Discipline and Safety."⁵¹ The amendments created a new statutory scheme governing student discipline in Ontario's schools. Under the *Act*, students are to be suspended or expelled for a range of listed infractions, except where "mitigating factors" are present.⁵² However, the *Act* does not explicitly recognize disability as a mitigating factor.

The Commission heard that the school system is not well-equipped to deal with students whose disabilities may manifest in disobedient or disruptive behaviour. Consultees told the Commission that, in many cases, students are suspended or expelled without due consideration of their right to accommodation.

Justice for Children and Youth observed: "Since the implementation of the *Safe Schools Act*...[there has been] an increase in the number of parents of students, and students reporting suspensions and expulsions to our offices. More specifically, there has been an increase in the number of reported cases of suspensions and expulsions by students identified by their particular boards of education as 'exceptional'. Quite often students are expelled or suspended for the very behaviour which makes them exceptional. For example, in two recent cases parents of students with Tourettes Syndrome reported to us that their children were being disciplined for swearing..., a behaviour which is beyond their control. In both of these cases, the student had been identified as exceptional."

Several consultees expressed the view that lack of access to accommodations in the classroom can lead to increased frustrations on the part of students, which then lead to an increased incidence of disobedient behaviour and emotional outbursts.

The Commission was told that, in some cases, parents are being pressured to “voluntarily” remove their children from school, that students with disabilities are being ostracized for behaviour that may be beyond their control, and that the suspension and expulsion provisions of the *Act* are not being interpreted or applied consistently throughout the province.

The Commission heard about restrictive disciplinary practices taking place in some classrooms. For example, the Commission heard that students with disabilities are subjected disproportionately to forced isolation - often in a room outside of the classroom - as a method of behaviour control. The Commission also heard that restraint procedures are sometimes being misused to the psychological and, in some cases, physical detriment of students.

One parent described the effect of these practices as follows: “When students with disabilities are arbitrarily removed, excluded, suspended or expelled from school it is an affront to their dignity and basic right to attend. The effects of being removed from society can be serious and long lasting. The effects on how students are viewed by their peer groups can also be devastating. Students who are removed are not attaining or enjoying the same levels of performance, benefits and privileges experienced by others.”

The view was also expressed that the *Safe Schools Act* is often applied more strictly to children with disabilities from racialized communities. For example, in its submission ARCH stated “it is the view of some racialized communities that their children are more likely to be suspended or expelled than white children and that the *Safe Schools Act* is applied differentially to them. In many instances, although the conduct giving rise to the reprisal is disability related, the student’s needs are not identified or supported.” Along the same lines, another consultee commented: “Black male students are particularly vulnerable to sanctions such as removals due to stereotypes involving aggressive behaviour.”

In order to properly evaluate the adverse impact that the *Safe Schools Act* may be having on individuals protected by the *Code*, it is necessary to obtain more information about which students are being disciplined under the *Act*. Collecting information about identity based on *Code* grounds, however, may lead to a concern that the information might be used to treat an individual or group differently. Data collection for monitoring and evaluation purposes is permitted by the *Code* in the context of a special program.⁵³ Such collection and use of data should only ever be undertaken for legitimate purposes not contrary to the *Code* such as ameliorating disadvantage, removing systemic barriers and promoting substantive equality for individuals protected by the *Code*. There should always be a rational and objective connection between the nature of the information being collected and its intended use. The form that data collection takes should be the least intrusive alternative that most respects the dignity and confidentiality of individuals. Based on the large amount of feedback received from participants on this issue, it is the Commission’s view that the collection of aggregate data on the application of the *Safe*

Schools Act is both necessary and appropriate insofar as it is used only for the legitimate purposes already outlined. The Commission heard that some schools are already collecting this type of information, but that it is not being done consistently across the province, and where it is being collected, it is not always being analyzed.

Under the *Code*, education providers have a legal obligation to accommodate students with disabilities up to the point of undue hardship. All students with disabilities, even those whose behaviour is disruptive, are entitled to receive accommodation.

Part 3.4 of the Commission's *Disability Policy* states: "Before terminating or sanctioning an employee for 'unacceptable behaviour', an employer might first consider whether the actions of the employee are caused by a disability, especially where the employer is aware or perceives that the employee has a disability." This principle applies equally to the educational context. Education providers have a duty to assess each student individually before they consider disciplinary measures under the *Safe Schools Act*. Specifically, they have an obligation to consider the effect that a student's disability may be having on his or her behaviour, to inquire into whether the student has accommodation needs, and where discipline of the student is warranted, to implement such discipline progressively and with discretion.

Some participants stressed that it can be very challenging for the school system to deal with students whose disabilities may result in uncontrollable, at times even violent, behaviour. School boards are in the difficult position of having to balance the right of a student with a disability to accommodation, preferably in the regular classroom, with the rights of other students to a safe educational environment and of school staff to safe working conditions.

Maintaining a safe learning environment for students, school staff and educators alike is an important objective. And where a student engages in behaviour that impacts upon the well-being of others, it may be open to education providers to argue that to accommodate that student would cause undue hardship on the basis of health and safety issues, specifically, that the accommodation would pose a risk to public safety. However, the seriousness of the risk will be evaluated only *after* accommodation has been provided and only after appropriate precautions have been taken to reduce the risk. The onus of proof will be on the education provider to provide objective and direct evidence of this risk. As the Commission's *Disability Policy* states, "A mere statement, without supporting evidence, that the... risk is 'too high' based on impressionistic views or stereotypes will not be sufficient."⁵⁴

ACTIONS REQUIRED:

- (1) That, consistent with the Commission's *Disability Policy*, educators be required to use discretion in their application of the *Safe Schools Act* and must assess whether appropriate accommodation has been provided to a student with a disability, and implement practices of progressive discipline, if discipline is appropriate, before that student can be either suspended or expelled.

- (2) That school boards collect and analyze data on suspension and expulsions under the *Safe Schools Act* to ensure that the *Act* is not having an adverse impact on individuals protected under the *Code*. School boards to ensure that individual data is collected in a manner that is provided for in the Commission's *Guidelines on Special Programs*, and is used only to address inequities and to promote compliance with the *Code*. School boards to take steps to ensure the confidentiality of students in this process.
- (3) That the Ministry of Education provide appropriate training to educators on how to deal effectively with students whose disabilities may cause them to be disruptive in school.

Disability and Other Forms of Discrimination

In recent years, human rights analysis has evolved to take into account the context in which discrimination occurs. Under the *Code*, individuals are protected from discrimination and harassment on numerous grounds, one of which is disability.⁵⁵ There is an increased recognition that discrimination is often based on more than one ground, and that these grounds may intersect thus producing unique experiences of discrimination.⁵⁶ For example, persons with disabilities may also experience discrimination on other grounds in addition to disability such as race and/or gender.

The Commission has explored this “contextualized” or “intersectional” approach to discrimination analysis at length in its Discussion Paper entitled *An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims*.⁵⁷ It is the Commission's view that a contextual approach is needed in order to fully appreciate and do justice to the complex and multifaceted ways in which many people experience discrimination.

In its Consultation Paper on disability and education, the Commission asked stakeholders to provide examples of ways in which students with disabilities are affected also by being members of other historically disadvantaged groups. The considerable response to this request confirms that an intersectional approach to analyzing discrimination against students with disabilities is both necessary and appropriate.

The Commission learned that students with disabilities who have recently immigrated to Canada often have an especially difficult time in school. The KIDS' Coalition observed: “Children of new Canadians and landed immigrants who have disabilities are at a distinct disadvantage. In many cases their families will not have the time or resources to find out about community health and social services. The families may also have language difficulties and/or cultural perceptions that prevent them from getting the help they need.” This situation is particularly worrisome considering that consultees repeatedly stressed to the Commission the importance of parental advocacy in navigating the special education system effectively. The Provincial Auditor's 2001 Annual Report also concluded that “it is up to parents to advocate for their child when they feel their child is not getting the assistance that he or she requires. However, the ability of parents to advocate for their child is variable depending on how well informed they are about available services and supports.”⁵⁸

In their 2002 Report, People for Education noted that cutbacks to English as a Second Language (ESL) programs have resulted in students who are new immigrants to Canada being “incorrectly placed into special education programs in an effort to provide them with additional support.”⁵⁹ The Commission also heard that some of these students are being misdiagnosed as having learning disabilities.

The Commission heard that a student’s gender may have an impact on their experience in the special education system. The Ontario Association of Speech-Language Pathologists and Audiologists expressed a concern that female students with language and/or speech-based disabilities may not receive appropriate special education services. They noted: “Female children with communication and language delays or disorders and whose behaviour may be unremarkable, often go undetected. Their disabilities may be misunderstood as shyness or part of a gender stereotype.” Research also indicates that boys are much more likely than girls to be diagnosed as learning disabled or emotionally disturbed.

Consultees told the Commission that students in the French language education system have difficulty accessing special education services that are sensitive to their needs. For example, the Ottawa Francophone Chapter of the Ontario Autism Society commented that “Francophone children in the Ottawa area who are diagnosed with autism or P.D.D. [Pervasive Developmental Disorder] have virtually no access to specialized services in their mother tongue between the time they are diagnosed and the time they are eligible to attend school.” The Rozanski Report also made note of “the difficulty of securing francophone specialists for programs and services, particularly in the area of special education.”⁶⁰ Conseil des Écoles Catholiques de Langue Française du Centre-Est told the Commission that Francophone students with disabilities are also faring very poorly on the Grade 10 literacy test. They suggested that a working group be established to examine the issue. There is currently a case before the Human Rights Tribunal that will consider whether the lack of a specialized service in French resulted in discrimination against a Francophone child because of the combined effect of his minority language education rights and his disability. Although the *Code* does not explicitly identify “language” as a prohibited ground of discrimination, language can be an element of a complaint based on other grounds in accordance with the Commission’s *Policy on Discrimination and Language*.

The Commission heard that students with disabilities from Aboriginal communities often experience particular disadvantage in the education system. Research indicates that the incidence of disabilities amongst Aboriginal children is disproportionately higher than that of the general population. For example, the Canadian Policy Research Networks estimated that First Nations people are three times more likely to have diabetes than other Canadians, and that aboriginal peoples are also more likely to have hearing, sight and speech disabilities.⁶¹ In 1996, a Federal Task Force on Disability Issues determined that an Aboriginal Canadian with a disability is significantly more disadvantaged than the average Canadian due to jurisdictional complexities in governance, inadequate funding, and a failure of mainstream programs to take into consideration the special needs of the Aboriginal community.⁶² Concerns have also

been raised that cultural biases inherent in standardized special education assessment tools have an adverse effect on Aboriginal students.⁶³

Consultees also reported that students with disabilities from low income families encounter unique hurdles in the special education system. Parents of these children often find it extremely difficult, if not impossible, to take time out from work to advocate on their child's behalf. This situation is only exacerbated for single parents. Research also indicates that children with disabilities are over-represented in families with low income. One study suggests that this may be so "first, because the extra time required for care leaves less time for the parents to do paid work, and second, because these families face higher out-of-pocket expenses in order to look after children with disabilities."⁶⁴

ACTIONS REQUIRED:

- (1) That the Ministry of Education, school boards and schools develop programs and activities that promote awareness of the unique experience of students with disabilities who are also members of other historically disadvantaged groups.
- (2) That school boards and schools consider the unique situations of students with disabilities who are also members of other historically disadvantaged groups when assessing these students through the IPRC and IEP processes.
- (3) That school boards and schools design and deliver workshops for parents who are new Canadians and/or whose first language is not English to assist them in understanding and participating in the special education system.

Negative Attitudes and Stereotypes

The Commission's *Disability Policy* emphasizes human dignity, respect and the right to equality. The *Policy* states:

Human dignity encompasses individual self-respect and self-worth. It is concerned with physical and psychological integrity and empowerment. It is harmed when individuals are marginalized, stigmatized, ignored or devalued.⁶⁵

Negative attitudes, ignorance, misinformation and stereotypes about the nature of specific disabilities, and/or about persons with disabilities themselves can be extremely damaging to an individual's sense of dignity, to their self-confidence, and to how they perceive themselves in the educational environment. In *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights) ["Grismer"]*, the Supreme Court of Canada stressed the importance of

...combating false assumptions regarding the effects of disabilities on individual capacities. All too often, persons with disabilities are assumed to be unable to accomplish certain tasks based on the experience of able-bodied individuals. The thrust of human rights legislation is to eliminate such assumptions and break down the barriers that stand in the way of equality for all.⁶⁶

The Opportunity to Succeed: Achieving Barrier-free Education for Students with Disabilities

The *Code's* protection against discrimination on the basis of disability includes a subjective element, namely, one based on perception of disability.⁶⁷ The Supreme Court has also made it clear that disability must be interpreted to include its subjective component, since discrimination may be based as much on perceptions, myths and stereotypes, as on the existence of actual, functional limitations.⁶⁸ Society's response to a real or perceived disability has been referred to as "social handicapping." In a recent decision, a British Columbia Human Rights Tribunal found discrimination to exist where a school's administration refused to re-enrol a student with a disability due to its belief that she did not belong at the school. The Tribunal found that:

Those beliefs were based on assumptions about [the student's] inability to excel in an academic environment. The beliefs were not informed by advice from personnel with expertise in the instruction of students with severe learning disabilities.⁶⁹

The school setting can be an ideal place for young people to learn about diversity and be exposed to differences between themselves and their peers. Effective education can be the key to acceptance of these differences and to respectful and harmonious co-existence. As such, the Commission was very concerned to hear about the persistence of negative attitudes towards persons with disabilities in the education system.

The Spina Bifida and Hydrocephalus Association of Ontario told the Commission that "Accommodation for students with disabilities is often perceived as extra and an imposition on serving 'normal' students, rather than a basic right for all." A parent of a child with autism informed the Commission that "some children within the schools in Ontario still use words such as Retard, Stupid, Slow, and Dummies when referring to the developmentally challenged class."

ARCH noted that a "failure to adequately address bullying and taunting in the classroom and the schoolyard is a barrier to success for the student on the receiving end. At times it results in great anxiety and fear and the student's non-attendance altogether." If left unchecked, harassment can impede a student's ability to access educational services equally and to participate fully in the educational experience.

Consultees emphasized that the attitudes of educators towards disability issues will largely influence the way in which other students perceive and relate to students with disabilities. On this point, Community Living Toronto remarked: "While the principal sets the tone for the school, it is the teacher who must model attitudes and acceptance of all students within their class.... If teachers do not demonstrate respect for the rights of every child to be enrolled in the classroom, how can we expect that students will accept people with differing abilities?" The KIDS' Coalition expressed a similar sentiment: "Teachers and principals who are knowledgeable about disability, and sensitive to the creation of inclusive classrooms and schools are the best protection that disabled students have against harassment and negative stereotyping." In *Trinity Western University v. British Columbia College of Teachers*, the Supreme Court of Canada stated:

...teachers are a medium for the transmission of values. It is obvious that the pluralistic nature of society and the extent of diversity in Canada are important elements that must be understood by future teachers because they are the fabric of society within which teachers operate and the reason why there is a need to respect and promote minority rights... Schools are meant to develop civic virtue and responsible citizenship, to educate in an environment free of bias, prejudice and intolerance...⁷⁰

Participants expressed concerns that teachers may not be receiving appropriate training in working with students with disabilities, or in dealing with disability issues. For instance, ARCH commented: "In our communications with educators we frequently notice that the language they use with respect to disability repeats standard stereotypes. For example, a student is 'wheelchair bound' or 'suffers from a disability'." The Ontario Association of Speech-Language Pathologists and Audiologists suggested that a way to deal with this might be "Partnering schools, students and teachers from diverse school boards to develop and share experiences and effective practices in integrating children with differences and disabilities in the classroom and community."

The 2001 Provincial Auditor's Report also found that teacher training in disability issues was inadequate. The Report states "[g]iven that the Ministry expects students with special needs to be educated in the regular classroom wherever possible, all teachers need a strong foundation in special education service delivery. Nevertheless, at the time of our audit, efforts to ensure that all teachers had this strong foundation were not sufficient."⁷¹ Due to the high retirement rate of teachers in recent years, there has been a big turnover in the profession. Consequently, there are fewer teachers with extensive teaching experience, particularly in the specialized area of special education.

The certification requirements for teachers in Ontario are undergoing major changes. In June 2001, the provincial government enacted the *Stability and Excellence in Education Act* which requires all teachers to complete a Professional Learning Program for the purpose of professional development in order to maintain their licence to teach in publicly-funded schools in Ontario. The program was fully implemented in September 2002 and teachers have until 2007 to complete the required professional learning courses. The program requires teachers to take 14 courses every five years, seven of which are core courses. One of the core courses is dedicated to the subject of special education. This course includes information on:

- learning disabilities, learning exceptionalities, gifted students and other students with special needs
- students at risk of failing or dropping out for social, economic or emotional reasons
- teaching strategies for accommodating and modifying the curriculum for exceptional students and students at risk
- supporting students equitably and with respect
- the Identification, Placement and Review Committee (IPRC) process
- writing and using an Individual Education Plan (IEP)
- planning students' transition out of high school
- funding of special education programs.

In addition, another core course called “Student Assessment” includes a unit on accommodations for assessments. It would appear that this training, if conducted appropriately, has the potential to better train teachers in the publicly-funded school system to deal more effectively with disability issues.

Participants also expressed the view that teachers who have disabilities themselves can be highly effective in demystifying disability issues for students and school faculty alike. The National Federation of the Blind commented: “The presence of more teachers who are blind or vision-impaired would act as role models to students in the regular school system, and would also help educate other teachers and administrators on the capabilities of persons who are blind. Not only must the education system do much more to encourage persons who are blind to consider the teaching profession as a viable career to pursue, it must also encourage teachers who encounter blindness later in life to remain in the profession.”

ACTIONS REQUIRED:

- (1) That the Ministry of Education monitor its Professional Learning Program to determine its ability to prepare teachers to deal effectively with disability issues and to treat students with disabilities with dignity, respect and sensitivity.
- (2) That schools boards and school staff engage in educational activities designed to raise student awareness of disability issues and to combat negative attitudes and stereotypes about persons with disabilities.

Labelling

Throughout the consultation, many individuals and organizations voiced concerns about the practice of labelling students with disabilities in the education system. Participants told the Commission that labelling takes place at various stages in the special education system (e.g. the IPRC process). The Cornwall Parent Support Group stated its view that students “are judged against presumed group characteristics rather than being assessed by their own personal abilities.”

Labelling of students can result in pre-determining accommodation on the basis of stereotypical assumptions, rather than assessing the individual needs and strengths of each student. Moreover, preoccupation with labels and their accompanying stereotypes can lead to pedagogic and social interactions that can be detrimental to students with disabilities in ways that promote paternalism and are an affront to dignity and individuality.

It is the Commission’s policy position that 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. At all levels, it is important that the focus remains on the individual, rather than on the category of disability. Concerns arise where labels are used in such a way that an individual’s unique characteristics, including their disability-related needs, are oversimplified, and their strengths and individuality are reduced by their designation in a fixed category.

Participants expressed numerous concerns about the Intensive Support Amount (“ISA”) funding process and its reliance on pre-set categories for determining funding levels. School boards receive money through Special Education Grants. These grants are designed to provide funding for the incremental costs of delivering special education programs and services. Other costs, (e.g. classroom teachers, heating and lighting) are to be covered through the basic grants that school boards receive for all students, including those with special needs. Special Education Grants have 2 components:

- 1) The Special Education Per Pupil Amount (“SEPPA”), which is based on a school board’s total enrolment (counting all students). This funding is used for special education programs and services that address the full range of exceptionalities.
- 2) The ISA, which is a variable amount related to the number of high-needs exceptional pupils in a board (i.e. students who require high-cost specialized equipment, programs and classroom supports).

There are 5 levels of ISA funding.⁷² School boards file claims for ISA funding in relation to individual students. The claim form outlines criteria associated with various “profiles” (e.g. “behaviour,” “deaf/hard of hearing,” “autism/PDD,” “developmental/intellectual,” “blind/low vision”). School boards are expected to classify each high-needs student according to the profiles.

The Commission heard that the use of these profiles stereotypes students, fails to consider the individual needs of students, and demeans the dignity and sense of self-worth of students with disabilities. The Commission learned that throughout the school system, students are known as “ISA kids,” meaning “high needs kids,” and are identified more by their disabilities than by their individual characteristics. Consultees expressed concerns that the label precedes the student and creates fixed preconceptions about that student’s capabilities.

The tiered structure of ISA funding means that the more “severe” a student’s disability, the more money the school board will receive. Consultees stated that this system encourages school boards to exaggerate the disability-related needs of students in order to secure greater ISA funding, and discourages them from acknowledging a student’s improvement. The Ontario Coalition for Inclusive Education remarked: “It pays to devalue students. Money is lost if strengths are documented. So where is the motivation to provide accommodations that promote learning?”

One participant elaborated further: “This funding system also discourages the Boards from providing successful remedial and/or compensatory programs that will help the child to be included within the mainstream. More money is given to Boards that document poorer children’s performances on cognitive and academic measures and document more severe behavioural problems. These Boards may be providing poorer services that contribute to the children’s failure. They then get more money to continue to provide ineffective special educational support. Boards that successfully remediate the child are penalized with less funding.”⁷³

Some consultees saw the issue of labelling differently. The Centre for Equity and Human Rights at Seneca College stated: “Labels in themselves are not the problem. Misuse of labels is the problem.” Some participants even saw value in labels. For example, the Autism Society Ontario expressed the view that “labelling of students with ASD [Autism Spectrum Disorder] can be positive. Students with ASD, particularly those with better language skills, are often seen as exhibiting intentionally poor behaviour. Other students may see them as ‘weird’. Once these students are identified as having ASD, a neurological disorder, there is often greater acceptance of them. The label has helped to identify them as disabled and not as rude, offensive or weird.” Expressing similar views, the Learning Opportunities Task Force stated: “We have ample evidence that false delicacy on the part of the school system to avoid labelling has a terrible impact on students with learning disabilities. The use of identifying terminology is an essential component of ensuring the provision of ongoing appropriate programming, services and accommodations to students with disabilities.”

Participants also expressed concerns that the current ISA funding process fails to recognize and account for the needs of students who have more than one disability. For example, the Special Education Advisory Committee of Ottawa Carlton Catholic School Board stated: “If a child has two exceptionalities, the identification process does not allow for the funding of both exceptionalities – only one will be funded. Their unique needs as related to both exceptionalities must be met, however from a funding standpoint they only qualify under one set of criteria.” This problem would seem to demonstrate the shortcomings of a system that over-relies on rigid categories to identify student needs.

Education providers have a duty to accommodate a student with a disability up to the point of undue hardship regardless of how neatly that individual may fit into administrative categories. As is stated in the Commission’s *Disability Policy*: “There is no set formula for accommodating people with disabilities. Each person’s needs are unique and must be considered afresh when an accommodation request is made.”⁷⁴

Individuals and organizations also had concerns about the “one envelope” style of funding ISA claims. ISA amounts generated by student-specific claims need not be spent on these specific students. Although school boards file ISA claims based on individual students, ISA funding (excluding ISA Level 1 and the SIP) is not allocated on a student-specific basis. Each board is permitted to use its total special education revenue to meet the needs of all of its students with special needs. Participants informed the Commission that this style of funding ISA claims does an indignity to persons with disabilities by pitting student against student and setting up a “triage” system in which the most funding goes to the student whose disability is considered the most “severe.”

Participants also expressed concerns that while this funding structure encourages school boards to use the disability-related needs of students to generate funding, some students with disabilities, on whose behalf ISA claims have been made, fail to benefit directly from the money received. Community Living Upper Ottawa Valley observed that “The ability of boards to move funds in special education lends itself to inequities for children whose

parents fail to understand or exercise their rights and find it difficult to advocate on their children's behalf in the ever-changing provincial educational system.”

ACTIONS REQUIRED:

- (1) That the Ministry of Education, school boards and school staff review special education practices and procedures to ensure that accommodation is governed by the principle of individualization rather than by generalizations about specific disabilities.
- (2) That the Ministry of Education ensure that any system of funding that it administers, ISA or otherwise, complies with human rights law and policy. Specifically, that such a system avoids labelling and focuses on the disability-related needs of each individual in its assessment process.

Accommodation Process

The principles of respect for dignity, individualization, and integration and full participation, as outlined in the Commission's *Disability Policy*, apply both to the substance of an accommodation and to the accommodation process. The manner in which an accommodation is provided and the methods by which it is implemented are subject to human rights standards.

The *Education Act* and its accompanying regulations set out a structure for the identification and accommodation of disability-related needs in the publicly-funded school system. Under the *Education Act*, the Ministry of Education is responsible for requiring school boards to implement procedures for identifying student needs, and for setting standards for identification procedures.

Regulation 181/98, under the *Education Act*, requires all school boards to establish at least one Identification and Placement Review Committee (“IPRC”). An IPRC is composed of at least 3 people, one of whom must be a principal or supervisory officer of the board. The principal of a school may, by his or her own decision, or at the request of a parent, refer a student to an IPRC for a decision as to whether or not the student is “exceptional”, and if so, whether he or she should be placed in a regular classroom with supports, or in a special education class.⁷⁵ In making these decisions, the IPRC must consider educational, health and psychological assessments, as well as information submitted by the parents.⁷⁶ The IPRC can also interview the student. The IPRC 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 as the recommendations are not binding. In addition to assessing students who have not previously been identified as “exceptional,” the IPRC assesses students who are transferring from a demonstration school to the regular school system, and reviews existing student identifications and placements.

Throughout the consultation, consultees expressed many concerns about the IPRC process. In particular, the Commission heard that the process lacks an effective dispute resolution mechanism. While Regulation 181/98 provides for an appeal of IPRC

decisions dealing with determinations of “exceptionality” and student placement, it does not provide an avenue for parents to appeal the IPRC’s recommendations regarding special education programs and services for their child. As a result, disputes between parents and educators about IPRC recommendations regarding programs and services are increasingly ending up at the Commission as human rights complaints.

Consultees told the Commission that the appeal process for decisions regarding identification and/or placement is cumbersome, time-consuming and overly litigious. Parents may appeal these types of decisions to the Special Education Appeal Board. However, these decisions are not binding on the school board, and if the school board chooses not to implement the Board’s decision, the parent or pupil will have to appeal another level to the Special Education Tribunal. Several consultees indicated that the first level of appeal is a waste of valuable time since these decisions are not binding, and often end up being appealed to the Tribunal. Then, even if a parent gets a favourable decision from the Tribunal, more time may be spent in court if the school board applies to have the decision judicially reviewed.

Participants emphasized that every day lost in delays in the appeals process is a day that a child is not receiving the education they need. In some cases, the delay may even prevent the child from attending school at all. The Special Education Advisory Committee of the Huron-Superior Catholic District School Board recommended that “A body which provides direct access for parents to raise their concerns and address issues in a timely fashion should be formed.” They observed that “The current IPRC appeal process is lengthy, expensive for School Boards and not user friendly. Parents find this process stressful, intimidating and often not objective or positive.”

If the IPRC decision is not appealed, the school principal is notified to prepare an IEP for the student.⁷⁷ As mentioned previously, an IEP is a written summary of a student’s strengths, interests and needs. It sets out the special education programs and services established to meet the student’s needs, and describes how these programs and services will be delivered. It is a working document that allows for modifications in response to the student’s growth and changing needs. In addition to serving as a guide for educators in monitoring the student’s progress, it is also meant to serve as an accountability tool for the student, his or her parents, and others working with the student. In developing the plan, the principal must take into consideration any recommendations made through the IPRC process.

Participants in the consultation described many problems in the development and implementation of IEPs. The Commission heard that, in many instances, local level school practices do not comply with the standards set in legislation and in the Ministry of Education’s special education policy statements.⁷⁸ In particular, consultees reported that, often, IEPs are not prepared in a timely fashion, that they are not an accurate reflection of a student’s disability-related needs, and that the supports described as necessary in the IEP are not provided. And, as Justice for Children and Youth noted, “Without a clear right of appeal...parents have little recourse when the IEP fails to come up with a plan which adequately addresses the needs of the disabled pupil.”

The Provincial Auditor’s 2001 Annual Report supports the observations of consultees.

The Report states that, despite legislative and policy requirements, many IEPs are not completed in a timely manner,⁷⁹ and many educators are not specifying in the IEP the services or supports that a student needs to meet his or her learning objectives, in part because “educators were concerned that they might not be able to provide a specified level of support” and might thus face legal action by parents.⁸⁰ The Report goes on to state that of the schools surveyed, “principals allocated the resources they were given based on their own judgment and that of their staff regarding the relative need of each student with special needs. They also noted that resource allocation was influenced by persistent advocacy by parents and not just by assessed needs.”⁸¹ Of particular note, the Report observes that neither the Ministry of Education nor the school boards had established the quality-assurance processes necessary to ensure that all exceptional students have appropriate programs and services available to them.

The Commission was also very concerned to hear from consultees that the IEP is sometimes used inappropriately as a tool to generate funding. Specifically, the Commission heard that, in some cases, exaggerated characterizations of a student’s disability-related needs make their way into the student’s IEP, as a way to “bolster” the student’s ISA claim. The effects of this practice will be discussed further under “Appropriate Accommodation.”

Throughout the consultation, many parents described feeling intimidated by and excluded from participating in the accommodation process. Although Regulation 181/98 requires IPRCs to consider information from parents in making their decisions and gives parents the right to have a representative with them at the IPRC meeting, many parents continue to find the whole process alienating. For example, in its submission Community Living Toronto stated: “The entire IPRC process is extremely intimidating to parents... Parents of children with an intellectual disability must sit through ‘team meetings’ and IPRCs with up to 12 professionals who may never have met their child. The process is not explained fully. Parents may not understand the purpose of the meeting, the scope of the decisions that will be made, who will be in attendance and what their role in the meeting will be. Very seldom are translation services offered to families who have English as a second language. Parents often sign forms without understanding the far-reaching implications for the future.” Similarly, the Canadian Council of the Blind, Ontario Division stated: “Parents, generally, are not adequately informed of their rights, and often think that the educational professionals must know what’s best for their child.”

Regulation 181/98 also requires principals to consult with parents in the development of a student’s IEP. However, the Commission heard reports from several participants that this is not always happening. Some parents expressed feeling pressured to sign the IEP, even though they were not certain that it was in their child’s best interest. Some even went so far as to say that they feared that if they did not go along with the opinions of school staff, their child would suffer reprisals.

In its *1993 Annual Report*, the Office of the Provincial Auditor of Ontario recommended that “Each school board should advise parents annually of the existence of the parents’ guide, and in particular point out the parents’ right to refer their child to the IPRC through the principal. The parents’ guide should include a description of the full range of options

for their child, including options available at provincial and demonstration schools.”⁸² In its *2001 Annual Report*, the Provincial Auditor concluded that this recommendation had only been partially implemented. It stated: “Regulation 181/98 requires a board’s parents’ guide to be provided to families of exceptional students and available at all schools and at the Ministry’s district offices. However, it does not require that [the guide] be provided to parents in advance of IPRC meetings and in many cases they were not at the schools we visited.”⁸³

As stated in the Commission’s *Disability Policy*, “Accommodation is a shared responsibility. Everyone involved should co-operatively engage in the process, share information, and avail themselves of potential accommodation solutions.”⁸⁴ Since, in most cases, parents will have intimate familiarity with their own child’s needs and abilities, parental involvement is invaluable in designing effective accommodation plans for students.

ACTIONS REQUIRED:

- (1) That the Ministry of Education review the IPRC process and make any changes necessary to ensure that it meets both the procedural and substantive components of the duty to accommodate as mandated by the *Code* and the Commission’s *Disability Policy*.
- (2) That the Ministry of Education develop and implement an effective mechanism for resolving disputes that arise in the accommodation process.
- (3) That school boards and school personnel abide by human rights obligations when engaging in the accommodation process.
- (4) That the Ministry of Education provide to parents plain language guides on the accommodation process in multiple languages prior to the IPRC meeting.
- (5) That school boards arrange and conduct information seminars for parents on the accommodation process and aspects of the special education system more generally.

Appropriate Accommodation

The Commission’s *Disability Policy* stipulates 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. The Commission will consider an accommodation 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.”⁸⁵ Once appropriate accommodation is received, students must still be able to perform the essential requirements of the service, that is, they must still be able to pass the school curriculum.

Human rights law has clearly established that equality may sometimes require different treatment that does not offend an individual’s dignity. In *Eaton v. Brant County Board of Education*, the Supreme Court of Canada ruled on the appropriate placement for a student with a disability.⁸⁶ 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 IPRC determined that Emily Eaton should be placed in a specialized setting. Her parents appealed the decision up to the Supreme Court of Canada. The Court 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 the 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 had striven to fashion a placement that would accommodate those needs and enable her to profit from the services that an educational program offers.

As the Commission noted in its *Disability Policy* “in some circumstances, the best way to ensure the dignity of persons with disabilities may be to provide separate or specialized services.”⁸⁷ However, education providers must first make efforts to build or adapt educational services to accommodate students with disabilities in a way that promotes their integration and full participation. It is the Commission’s view that, before considering placing a student in a self-contained, or specialized classroom, education providers must first consider inclusion in the regular classroom. In most cases, appropriate accommodation will be accommodation in the regular classroom with supports. However, every student with a disability is unique. In order to provide appropriate accommodation to all students with disabilities, education providers must, with the assistance of parental input, assess each student’s particular strengths and needs, and consider these against a full range of placements, programs and services. Ultimately, appropriate accommodation will be decided on an individual basis.

The Ministry of Education has articulated its policy position on this issue stating its commitment to the principle that “the integration of exceptional students should be the normal practice in Ontario, when such a placement meets the pupil’s needs and is in accordance with parental wishes.”⁸⁸

Regulation 181/98 also requires an IPRC to consider the placement of a student with a disability in a regular class with appropriate special education services before it considers placing that student in a special education class.⁸⁹ If the IPRC decides that a student should be placed in a special education classroom, it must give written reasons for its decision.⁹⁰

For those students whose needs cannot be met entirely in the regular classroom, an IPRC may consider a range of possible options:

- ***A regular class with indirect support.*** The student is placed in a regular class for the entire day, and the teacher receives specialized consultative services.
- ***A regular class with resource assistance.*** The student is placed in the regular class for most or all of the day and receives specialized instruction, individually or in a small group, within the regular classroom from a qualified special education teacher.
- ***A regular class with withdrawal assistance.*** The student is placed in the regular class and receives instruction outside of the classroom for less than 50 per cent of the school day, from a qualified special education teacher.
- ***A special education class with partial integration.*** The student is placed by the IPRC in a special education class with a regulated student-teacher ratio, for at least 50 per cent of the school day, but is integrated with a regular class for at least one instructional period daily.
- ***A special education class full-time.*** The student is placed by the IPRC in a special education class, where the student-teacher ratio conforms to Regulation 298, section 31, for the entire school day.⁹¹

In some cases, there may be a need to apply for admission to a Provincial School for students who are blind, deaf, or deaf-blind, or, a Demonstration School for students who have severe learning disabilities. The Ministry of Education also maintains a number of hospital schools, as well as care and treatment centres at various locations in the province, and schools in a number of correctional facilities. The programs at these locations have an educational component, but they will also concentrate on broader aspects of a student's development.

Feedback received throughout the consultation indicates that consultees are sharply divided on the issue of appropriate accommodation. The widely divergent input received from consultees indicates that there is ongoing debate regarding decisions to place students in specialized settings as opposed to placing them in mainstream classrooms with supports.

Many, if not most, consultees expressed their preference that students with disabilities be included in regular classrooms. The Commission heard that inclusion in the regular classroom facilitates greater interaction between students of varying abilities, that it develops positive attitudes and relationships, and that it is less likely to stigmatize people with disabilities. For example, Community Living Ontario wrote: "If a child with a disability begins life with an expectation of inclusion, she is much more likely to seek out, and be accepted in, inclusive environments and activities later in life. It is equally true, that when a student that does not have a disability is educated in an inclusive environment, inclusion will most likely remain her cultural expectation throughout life."

Expressing her preference for inclusion, one parent wrote: "School is a training ground for life. Students learn academics and skills, but they also learn about people, all kinds of people, and how to relate to them. If students are 'different,' do we include them by having a place for them at the back of the school, perhaps with a separate lunch schedule? Have them arrive after school begins and depart before school officially

ends? Have them enter and exit in their own separate door? Have them travel exclusively on their own segregated buses? How can other students gain understanding and acceptance if students with exceptionalities are treated in such a separate fashion?"

VOICE for Hearing Impaired Children, an organization committed to supporting deaf and hard of hearing children who communicate orally and who rely upon assistive listening devices to augment their ability to use residual hearing, also supports the inclusion of deaf students into the regular classroom.

The Commission heard, however, that placement in a regular classroom will not, in and of itself, result in inclusion in the educational and social components of student life. Consultees stressed that true inclusion requires that properly trained teachers and special education staff work together to adapt the classroom and school curriculum to meet the diverse needs of all students. Several participants expressed the view that true inclusion also depends in large part on adequate funding. For example, in its submission, the Dufferin Peel Educational Resource Workers' Association wrote: "Although the school board strives for maximum inclusion, the reality is poor physical facilities within schools, reduced funding for special programming, and depleted or non-existent professional development or specialized training opportunities for staff. Resources that have been reduced to the minimum cannot create an inclusive environment."

The Commission also heard that, despite a legislative and policy framework which officially supports inclusion, parents feel they have to fight to have their child placed in a mainstream classroom. Participants indicated that, in some cases, even an IPRC decision indicating that a student should be placed in a regular classroom with supports is not enough to secure that type of accommodation.

On the other side of the debate are those who stress the benefits of a specialized educational setting outside the mainstream classroom. The Commission heard that in the regular classroom, opportunities for intense one-on-one instruction for students with disabilities are reduced, educators are less able to teach and reinforce crucial special skills, and that the quality of education for the class as a whole suffers as a result. For example, The Autism Society Ontario wrote "...segregated classes can offer the opportunity to complete high school or learn skills that are not taught in typical classrooms but will allow [students] to function more fully in the community as adults. If integration during the school years is not the best way to produce adults who can meaningfully participate in the community, then it is not in the best interest of the child."

Along the same lines, one parent described the experience of her son in a specialized setting as follows: "[My son was] IPRC'd directly into an age appropriate Language Learning Disability (LLD) class.... He was happy, learning like a sponge, and didn't feel badly that he 'talked funny', because everyone in the class also made mistakes when finding, or saying, the right words, in the right order. He felt just like everyone else, and was unselfconsciously plugging along, a bit at a time, but definitely learning to read and count." She went on to write: "I sincerely ask you NOT to discount the immense value of homogeneous groupings of children with similar disabilities...i.e. congregated or specialized classes. Some people who insist on integration/inclusion above all, call them

‘segregated classes,’ and chastise us, sometimes cruelly. Many of us vehemently disagree, having seen the value of ‘congregating’ our children with others who learn the same things, the same way, and thus allowing them to feel part of a group.”

The Parents of Deaf-Plus Ontarians wrote: “It has been accepted for many years now in Ontario that Deaf citizens comprise a unique minority in their own language, rich culture and history. The recognized language of the Deaf is American Sign Language (ASL). Schools for the Deaf have played a huge role in fostering that language and culture, and all Deaf children should have the right to that education in their own language and culture.”

Disputes about appropriate accommodation, particularly differences of opinion about what constitutes a child’s best interest, are increasingly ending up at the Commission as human rights complaints. Some cases have stemmed from the IEP process, particularly where an IEP contains an exaggerated assessment of a student’s disability-related needs in order to make that student eligible for greater levels of ISA funding. The IEP is meant to be an accurate gauge of the student’s needs. When the IEP is used inappropriately in this way, it skews the official record of the student’s disability-related needs, and in many cases it raises the expectations of parents and students about the accommodations the student will receive. The discrepancy between the content of the IEP and the actual accommodation received by students has been the basis for several human rights complaints at the Commission. When IEPs are used for improper purposes, it can be very difficult to assess what the student’s needs actually are, and whether the school board has provided that student with appropriate accommodation.

ACTIONS REQUIRED:

- (1) That the Ministry of Education ensure that educators are developing and implementing an accommodation plan for each student with a disability, in accordance with the *Code* and the Commission’s *Disability Policy*, either through the IEP process, or otherwise.
- (2) That the Ministry of Education collect and analyze data on placements of students with disabilities, in accordance with the Commission’s *Guidelines on Special Programs*. That this data be used only for the purposes of addressing inequities and promoting compliance with Commission policy and the *Code*. This data could include: numbers of students in mainstream classrooms versus self-contained classrooms, number of students in each placement according to type of disability, number of students who also belong to other historically disadvantaged groups, *etc.* That the Ministry report its findings to the public.

Undue Hardship Standard

As described above, in 1998, the provincial government implemented a new funding formula for Ontario’s publicly-funded school system. Under the new formula, the Ministry of Education provides school boards with a base level of funding for each student through a Foundation Grant. In addition, the Ministry also provides additional funding through ten special purpose grants, one of which is the Special Education Grant.

Currently, all school boards receive the Special Education Grant. Boards must use special education funding for the special education needs of their students, including such expenses as special education teachers, teaching assistants, and other specialized professionals. Any money remaining after these needs have been met must be placed in a special education reserve fund. As mentioned previously, Special Education Grants include both the Special Education Per Pupil Amount (SEPPA) and the Intensive Support Amount (ISA). The SEPPA is allocated to boards on the basis of total student enrolment. The ISA covers the costs of programs and services for very high needs students, as well as specialized equipment.

In the 2002-03 school year, it was projected that grants to school boards would total \$14.26 billion. Of this amount, approximately \$1.37 billion was to be spent on the Special Education Grant.⁹² In December 2002, the provincial government announced \$250 million in additional funding for special education, bringing the total amount of funding for special education to \$1.6 billion annually. This announcement was made in response to recommendations made by the Education Equality Task Force in the Rozanski Report.

Throughout the consultation, the Commission heard extensively from consultees that the current funding levels for special education are inadequate. Participants expressed the view that insufficient resources are resulting in delays at many stages of the special education system, misuse of the ISA application process, and students with disabilities not receiving the accommodations to which they are entitled. As already mentioned, in its report entitled *Special Education and the Funding Formula: Emergency Service Only*, People for Education observed that the funding formula “has created a triage system of special education in which only the most needy are served.”⁹³

In its submission to the Commission, OPSBA (the Ontario Public School Boards’ Association) wrote: “Special education revenue for all exceptionalities has not kept pace with costs over time and does not match current expenditures. Furthermore, current expenditures do not meet student support needs. Services to students have therefore declined.”

CUPE (The Canadian Union of Public Employees), Ontario Division expressed its view that inadequate funding interferes with the proper functioning of the IPRC and IEP processes: “It is incongruous that the Individual Placement and Review Committee recommends particular supports for approved students, but does not have the power to ensure that those supports are provided. School principals, who are responsible for preparing the Individual Education Plans of special education students, are left with the unenviable task of balancing the needs of IEP students and the recommendations of the IPRC against insufficient resources.”

Under the *Code*, every student with a disability is entitled to accommodation up to the point of undue hardship. The *Code* sets out three factors that may be considered in assessing whether an accommodation would cause undue hardship: cost; outside sources of funding, if any; and, health and safety requirements, if any.

Consultees told the Commission that school boards frequently cite limited resources as a reason for not being able to provide appropriate accommodations to students with disabilities. The Commission's *Disability Policy* makes it clear that "whether an accommodation is 'appropriate' is a determination completely distinct and separate from whether the accommodation would result in 'undue hardship'."⁹⁴ The legal duty of a school board to accommodate students with disabilities is not discharged unless the school board can make out an undue hardship defence based on costs. In order to claim the undue hardship defence, the school board has the onus of proof. As stated in the Commission's *Disability Policy*, "The nature of the evidence required to prove undue hardship must be objective, real, direct, and, in the case of cost, quantifiable. The person responsible for accommodation must provide facts, figures, and scientific data or opinion to support a claim that the proposed accommodation in fact causes undue hardship."⁹⁵

The Supreme Court of Canada has said that, "*one must be wary of putting too low a value on accommodating the disabled. It is all too easy to cite increased cost as a reason for refusing to accord the disabled equal treatment*".⁹⁶ The cost standard is therefore a high one.

It is not sufficient for an education provider to fail to provide an accommodation because the costs of that accommodation may exceed the provider's pre-determined special education budget. The Commission's *Disability Policy* is clear on the threshold that a respondent to a human rights complaint must meet in order to successfully claim undue hardship based on costs. Part 4.4.2 of the *Policy* states: "Costs of accommodation must be distributed as widely as possible within the organization responsible for accommodation so that no single department...is burdened with the costs of accommodation. The appropriate basis for evaluating the costs is based on the budget of the organization as a whole, not the branch or unit in which the person with the disability...has made an application. In the case of government, the term 'whole operation' should refer to the programs and services offered or funded by the government."⁹⁷

The *Disability Policy* also states that larger organizations, in particular governments, "may be in a better position to set an example or provide leadership in accommodating persons with disabilities. Accommodation costs will likely be more easily absorbed by larger organizations."⁹⁸

The Commission heard that even though the Ministry of Education is in charge of a centralized system of funding for special education, and even though school boards no longer have control over the level of this funding, it is the school board that is most frequently considered responsible when students do not receive accommodations, and it is the school board that is most often named as the respondent in human rights complaints alleging discrimination on the basis of disability.

While an alleged shortcoming on the part of the Ministry of Education does not excuse the school board from its own substantive and procedural duty to accommodate under the *Code*, the Ministry of Education has responsibility for supplying adequate funding to school boards to allow them to provide appropriate accommodation to students with disabilities, as part of the duty to accommodate up to the point of undue hardship. In

Concerned Parents for Children with Learning Disabilities Inc. v. Saskatchewan (Minister of Education), a case involving the duty of the Saskatchewan Ministry of Education and various school boards to provide education and educational services appropriate to the needs and circumstances of a child with a learning disability, the government brought a preliminary application arguing that it was not a proper defendant. The Saskatchewan Court of Queen's Bench disagreed stating:

The defendant Government has argued that even if there is a duty to provide educational services to the infant plaintiffs...this is the obligation of the defendant Boards, who are responsible for the delivery of specific special education services, and the plaintiffs do not have reasonable prospect of success in this action against the Government of Saskatchewan, which, by statute, sets general policy and provides partial funding, but does not deliver specific services.

I cannot accept this argument. ...[T]he Government has and exercises the obligation to set policy and standards, evaluate programs and provide funding to school boards for certain types of expenditures. If the plaintiffs should be successful in establishing at trial that they have a constitutional entitlement to widespread provision of educational services... then it will also be open to them, in my view, to establish, if they can, that the general policy standards and guidelines, and the funding parameters set by the defendant Government, fail to meet the constitutional standard. Arguably, policy standards that do not mandate compliance with the minimum constitutional standard are themselves constitutionally deficient. Similarly, funding that is insufficient to support services at a minimum constitutional standard may itself be shown to be constitutionally deficient.⁹⁹

In its submission, OPSBA recommended that “[I]n the interests of both fairness to the parties and the complete adjudication of all relevant issues, whenever a complaint is filed with the Commission alleging inadequate provision of special education programs and services, the Commission should place the Ministry of Education on notice of the complaint, consider adding the Ministry as a party respondent, and give the Ministry an opportunity to reply to the complaint.”

In order to assess an undue hardship defence based on costs, it is necessary to consider financial statements and budgets. However, the Provincial Auditor's 2001 Annual Report concluded that “the Ministry did not have the procedures in place to ensure that school boards provide comparable and reliable information about their special education expenditures in order to facilitate meaningful analysis and support funding decisions... The information available on school-board spending by activity or program is insufficient for management at school boards to manage costs effectively. As a result, the Ministry, trustees, Special Education Advisory Committees, and parents cannot assess how effectively management has spent special education funds.”¹⁰⁰

The Commission heard that the lack of available and precise financial information is having a detrimental effect on the provision of accommodation to students with disabilities. As mentioned previously, the Provincial Auditor's 2001 Annual Report noted that decisions regarding the provision of professional services to special needs students are being made based on budgets, and there is “no basis for either school boards or the

Ministry to evaluate the appropriateness of the service cut-off points currently in place.”¹⁰¹ Consultees told the Commission that without this information, it is extremely difficult to challenge a school board’s decisions. As the Ontario Association for Families of Children with Communication Disorders wrote in its submission: “One of the challenges of special education is that we do not know the true costs of adequate accommodation. By requiring school boards to document the services and programs they can’t afford to provide, we will have the opportunity to discuss which additional expenditures are reasonable and how else we can fund the accommodations.”

In its *1993 Annual Report*, the Office of the Provincial Auditor of Ontario recommended that “The Ministry of Education and Training should establish procedures that enable it to monitor the costs and effectiveness of special education programs and services delivered by school boards and facilitate the sharing of best practices among school boards.”¹⁰² In its *2001 Annual Report*, the Provincial Auditor concluded that this recommendation had not been implemented and made a further recommendation in this area.

ACTIONS REQUIRED:

- (1) That the Ministry of Education review the adequacy of resources provided to school boards to ensure that school boards are able to provide timely access to appropriate accommodation for all students with disabilities.
- (2) That the Ministry of Education implement and report back on the Provincial Auditor’s recommendation that it establish procedures to monitor the costs and effectiveness of special education programs and services.

POST-SECONDARY EDUCATION

Overview

Ontario offers a wide range of post-secondary options. These include eighteen universities, twenty-five colleges of applied arts and technology, agricultural colleges, colleges of health sciences and of art, a military college, privately-funded degree granting institutions, and private career colleges. There are also professional accreditation bodies that offer courses and evaluate students, such as, for example, the Law Society of Upper Canada. Each institution operates independently and determines its own academic and admissions policies, programs, and staff appointments.

Post-secondary education in Ontario is administered by the Ministry of Training, Colleges and Universities (MTCU). The Ministry develops policy directions for post-secondary institutions, authorizes universities to grant degrees, distributes funds to colleges and universities, registers private career colleges, and provides financial assistance programs for post-secondary students.

There were 263,637 students enrolled full-time in Ontario universities in the 2001-2002 school year. The number for colleges was 168,789. Enrolment at Ontario post-secondary institutions has been rising over the past decade, and the student population is expected to continue to grow rapidly over the next few years, due to the elimination of Grade 13, an increase in the population of 19 year olds in Ontario, and an increase in the participation rate of the 18-24 year old population.¹⁰³

For 2001-2002, 8,188 university students and 13,549 college students received accommodation for a disability, for a total of 21,737 students receiving accommodation. The most common type of disability cited by students at post-secondary institutions is a learning disability, followed by mobility impairments, and sensory impairments. A relatively small percentage indicate mental health disabilities.¹⁰⁴

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. All post-secondary institutions provide some specialized facilities, policies, equipment or services for students with disabilities. All publicly-funded post-secondary institutions have centres or offices for students with disabilities that will provide or coordinate provision of services and supports for students with disabilities. However, service delivery models vary widely.

Students with disabilities at post-secondary institutions encounter many of the same difficulties experienced at the primary and secondary levels of education. This section of the Report focuses on issues and challenges unique to the post-secondary environment.

Access to Education

General Issues

The Commission's *Disability Policy* reaffirms the right of persons with disabilities to full participation and integration. An accessible educational system is one in which persons with disabilities can "access their environment and face the same duties and responsibilities as everyone else, with dignity and without impediment".¹⁰⁵ In the context of post-secondary education, as with elementary and secondary education, accessibility goes beyond physical accessibility, to include accessible curricula, and delivery and evaluation methodology, as well as the provision of the necessary supports and accommodations to ensure that students with disabilities have equal opportunity in their education. Denial of access may be direct or indirect: it may result from refusal to accommodate students with disabilities, from admission criteria that indirectly exclude students with disabilities, or from barriers in funding programs.

Colleges and universities are required under the *Ontarians with Disabilities Act*¹⁰⁶ (the "ODA") to prepare and make public annual accessibility plans, in consultation with persons with disabilities. These plans must address barriers to people with disabilities, and ways to remove and prevent them, in the organization's by-laws, policies, programs, practices and services. The plans must include: a report on the measures the organization has taken to identify, remove and prevent barriers to people with disabilities; the measures in place to make sure that the organization assesses its proposals for by-laws, policies, programs, practices and services; a list of by-laws, policies, programs, practices and services the organization will review in the coming year to identify barriers; and how the organization intends to identify, remove and prevent barriers in the coming year. The Ministry of Citizenship has issued *Guidelines for the University Sector*, clarifying the requirements under the ODA for this sector.

The ODA also requires the Ministry to prepare similar annual accessibility plans, in consultation with the Accessibility Directorate of Ontario.¹⁰⁷

The ODA states clearly that nothing in it diminishes obligations under the *Code*. The *Code* continues to operate as the major enforcement mechanism for the rights of persons with disabilities. Accessibility plans may be effective means of ensuring compliance with the *Code*, as well as with the ODA. Education providers should take into account obligations under both pieces of legislation when drafting accessibility plans. The College Council on Disability Issues (CCDI) points out that, when considering access issues, the post-secondary educational system cannot be viewed in isolation. A student's experience in primary and secondary education will have a powerful influence on his or her access to post-secondary education. According to the CCDI:

When school boards do not provide timely assessment or special education services to students with disabilities, they jeopardize students' access to post-secondary education Without appropriate support, students with disabilities are at risk of academic failure and associated loss of self-confidence and self-esteem, and are thus less likely to go on to a post-secondary level of study.

The final report of the Learning Opportunities Task Force (LOTF) identifies supports for transition for secondary to post-secondary institutions as a major issue, recommending that school boards be held accountable for compliance with their regulatory responsibility to develop transition programs and plans, and that proven transition programming be made available to all students with learning disabilities who are going on to post-secondary education and are interested in participating in such opportunities.¹⁰⁸

Although physical accessibility issues are probably the most widely recognized and acknowledged disability-related barriers, there is still much work to be done in terms of the physical accessibility of post-secondary institutions. Even where physical structures comply with the *Building Code*,¹⁰⁹ barriers remain. The submission of the CCDI notes that:

The Building Code is insufficient in some instances in eliminating barriers. For example, the use of electronic chairs and scooters is on the rise at colleges across Ontario. However, they require more space to turn around than manual chairs, and students are not able to use 'handicapped accessible' washroom cubicles that currently meet old Building Code requirements.

The submission of ARCH notes that greater attention needs to be paid to the accessibility of student housing, stating that "Students spend much time educating the housing offices, and residences about their needs, as well as advocating for accommodations in housing". Where accessible student housing is not available, students with disabilities may not be able to attend a post-secondary institution at all, or may do so only at the cost of long, exhausting commutes. CCDI recommends that offices for students with disabilities be consulted when campus buildings are constructed or retrofitted. The Inter-University Disability Issues Association (IDIA) recommends that principles of universal design be embraced to ensure that the design of services and environments are usable by all people to the greatest extent possible, without the need for adaptation or specialized accommodation.

More and more post-secondary courses are computer-delivered, whether through websites or CD-ROMs. Failure to consider the requirements of students who use screen readers during the development of such courses can make them completely inaccessible. The National Federation of the Blind states that:

The 'duty to accommodate' must also apply when it comes to the design of any websites that will be required by students to participate in any distance education program. This involves designing such sites in a manner that will make them easily accessible by students who use large print or screen readers to read the content on these sites.

University admission policies may also create barriers. For example, some professional schools and graduate schools will not accept grades from part-time studies.¹¹⁰ Students with disabilities are more likely to pursue part-time studies, so these types of policies can pose significant barriers for these individuals. The IDIA states that "A standard for all university admissions policies and procedures, using inclusive language is required to facilitate equal access opportunities for students with disabilities".

Students with disabilities may face challenges simply getting to and from school each day. The lack of reliable, accessible public transportation may pose a formidable barrier to education for students with disabilities.¹¹¹ Students may find themselves persistently late for, or missing classes as a result. Where adequate assistance or student housing is not made available in a timely manner for students with disabilities, students may be forced to make long commutes to school every day and find themselves fatigued and burnt-out as a result.

Refusal to provide accommodation can provide a complete bar to access for some students. Several submissions raised concerns regarding private career colleges, which train a significant number of adults who are entering the work force, or seeking to upgrade their skills or change careers. Private career colleges, private universities, and professional licensing bodies, like all other post-secondary institutions, are bound by the *Code*. They are required to provide equal treatment with respect to their services, without discrimination because of disability. This means that they must provide accommodation to students with disabilities, up to the point of undue hardship. The cost of accommodation will only amount to an undue hardship where it is so substantial that it would alter the essential nature of the enterprise, or so significant that it would substantially affect its viability.¹¹² Some private career colleges are failing to respect their duty to provide accommodation to students seeking admission. For example, the Canadian Hearing Society stated that some deaf, deafened and hard-of-hearing students have been told that they must arrange and pay for sign language interpreters and real time captioners at private career colleges. Private career colleges are regulated by the *Private Career Colleges Act*.¹¹³ The Superintendent of private career colleges has the power to deny registration or renewal of registration to a career college in a number of circumstances, including where “the past conduct of the applicant affords reasonable grounds for belief that the applicant will not carry on the private career college in accordance with law and with integrity and honesty”.¹¹⁴ ARCH recommends that the government body regulating these institutions set requirements regarding the duty to accommodate, so that individual students with disabilities do not repeatedly have to fight to enforce their human rights.

Funding Issues

Background

Many of the access issues raised during the consultation were concerned with barriers related to funding programs and structures. The government has initiated numerous funding programs that may assist students with disabilities in accessing a post-secondary education. The funding structure for students with disabilities at the post-secondary level is complex, as there are a multitude of programs, with varying benefits and eligibility requirements.

Bursary for Students with Disabilities (BSWD) is intended to assist students in meeting additional costs of equipment and supplies related to their participation in post-secondary education, which the student must incur because of his or her disability. It is only for specialized equipment and services required for participating in post-secondary studies. Ineligible expenses include services and/or accommodation that are provided by the

institution as part of the institutional obligation to accommodate persons with disabilities under the *Code*;¹¹⁵ expenses covered by the Assistive Devices Program (ADP), OHIP or Workers Safety and Insurance Board (WSIB); as well as tuition, books, and housing.

To be eligible, students must be studying full-time at an approved public post-secondary institution, and in an approved program. Full-time is defined, in general, as a 60% course load or higher, and a 40% course load or higher for students with disabilities.

If a student is in default on an Ontario Student Assistance Program (OSAP) loan, or if the student “can not maintain satisfactory academic progress”, continued eligibility for the BSWD will be denied.

Students who are not Canadian citizens or permanent residents, or who are from another province and have not resided in Ontario for at least 12 consecutive months are not eligible.

The BSWD is made up of two components:

- The Federal Government’s Study Grant for Students with Permanent Disabilities (maximum \$8,000). Only students who have applied and qualified for OSAP are eligible for this portion of the BSWD.
- Provincial bursary funding provided by the Ontario government (maximum \$2,000). Students who are not eligible for loan funding may still be eligible for this. In determining eligibility, disability-related education support costs are included in the calculation of eligible education costs in the Ontario portion of the Canada-Ontario Integrated Student Loan needs assessment.

The BSWD is non-repayable and taxable.

Canada Study Grants for High Need Students with Permanent Disabilities provides a maximum of \$2,000 for tuition and living costs only to students with disabilities who have unmet needs after receiving the maximum loan from OSAP.

Canada Study Grant for High Need Part-time Students provides a maximum of \$1,200 for education-related expenses to part-time students, including students with disabilities, who meet the requirements of a part-time Canada Student Loan, and who demonstrate income need and an inability to study full-time. This grant is available to eligible students with disabilities taking a 20 to 39% course load.

Ontario Special Bursary Plan (OSBP) is a \$2,500 bursary available to part-time students, including students with disabilities, who are unable to attend full-time and who have income needs to cover tuition, books, etc. A student with a disability can access both the OSBP and BSWD, but will only qualify for the \$2,000 Ontario maximum component under the BSWD.

Bursary for Deaf Students Attending Out-of-Country Post-Secondary Institutions provides financial assistance to deaf, deafened and hard-of-hearing students attending post-secondary schools in the United States who have eligible education costs that are in excess of the weekly Canada-Ontario Integrated Student Loan maximum.

The Ontario government also provides funding directly to post-secondary institutions to assist with their disability accommodation responsibilities. The *Accessibility Fund for Students with Disabilities* is a portion of the operating grant targeted to assist publicly-funded universities and colleges in meeting their obligations under the *Code* to make their programs and services accessible for students with disabilities. It can be used for expenses related to the operations of centres for students with disabilities, adaptive and other technology, professional development, and the expenses of contract services such as tutors, note takers, and assessments. The MTCU also provides funding for print-alternate materials to support blind, visually impaired, and learning disabled students. For students who are deaf, deafened or hard-of-hearing, the government funds *Support Services for the Hearing Impaired*, which is administered by George Brown College on behalf of Toronto area colleges; two *Interpreter Funds* for post-secondary institutions outside of Toronto; and *Educational Support Services*, administered by the Canadian Hearing Society, which supports part-time study accommodation costs.

In 2002, the MTCU announced the *Enhanced Services Fund*, a unique initiative to assist college and university students with learning disabilities to get help from learning strategists, assistive technologists, and related technology. This was in response to the preliminary recommendations from the Learning Opportunities Task Force (LOTF), established in 1997. Through the LOTF, the government committed \$30 million over five years for initiatives including eight pilot projects at 13 colleges and universities across the province. The pilot projects, and the work of the LOTF have been lauded as examples of best practices in post-secondary education.¹¹⁶

Students with disabilities may also be eligible for funding from non-education related programs, such as the Assistive Devices Program (ADP), operated by the Ministry of Health, which funds personal needs equipment and supplies unrelated to work or education for persons with disabilities; the Ontario Disability Support Program (ODSP) which provides social assistance support for living and personal expenses, as well as employment supports (it will not cover tuition, books or travel allowance); and the Trillium Drug Program, which provides assistance with prescription drug costs.

Issues

Concerns regarding funding for students with disabilities should be viewed in the context of the rise in tuition fees for post-secondary students in recent years. Tuition fees at Ontario universities more than doubled between the 1989/1990 academic year and the 1999/2000 academic year.¹¹⁷ While this has posed issues for many students, it raises extra concerns for students with disabilities. As stated by the National Federation of the Blind:

Over the past five years, tuition fees in Ontario have risen dramatically. While this provides a new barrier to any student who does not come from a wealthy family, or lives in any area of Ontario not close to a college or university, this situation fails to take into account the extra burden placed on students with disabilities who not only face additional costs associated with their disabilities, but also often have far greater difficulties in securing summer employment.

Further, the amount of funding available to students with disabilities has not necessarily increased alongside rising costs for post-secondary education. For example, the OSBP amount has remained at \$2,500 for several years. Students struggle to pay the tuition for two courses, along with costs for books and travel, from this amount.

Part-time students face a number of extra financial barriers. Many students with disabilities register for part-time studies because of their disabilities, but for these students, a part-time course load is equivalent to full-time studies. OSAP has recognized this by defining a 40% course load as full-time for students with disabilities. However, many other services and programs do not recognize this. For example, as consultees indicated, part-time students are often not eligible for student health plans. Further, the submission of the CCDI points out that students undertaking reduced course-loads may still end up paying full-time fees:

Although policies and practices vary from college to college and even between programs within a given college, students taking a reduced course load often pay a full course fee at college. Even where refunds are provided for courses not taken, the refunds are often less than it costs the student to take the course at a later time, i.e. as a continuing education student. Thus, a student who takes half his first semester at one time and the other half at another time can end up paying up to twice the cost of a student without a disability. ... These additional costs can substantially increase a student's debt or make it financially impossible for them to complete their program of study, and thus affect their access to a post-secondary education.

Similarly, a number of submissions raised concerns with the fact that scholarships are designed mainly for students who undertake full time studies, at both the graduate and undergraduate level, excluding many students with disabilities. The Commission's *Policy on Scholarships and Awards* notes that scholarships are significant, not only in terms of financial access to educational services, but also as a means to access employment or post-graduate training. The *Policy* notes that:

[S]cholarships and awards should be based on factors such as merit, personal financial need, course specialization, or recognition of special contributions to academic or extracurricular life. Exclusionary scholarships or awards, on the other hand, use discriminatory criteria to assess eligibility. These criteria affect access to educational opportunities, either directly or indirectly.¹¹⁸

Provincial and federal financing programs for students are often of especial importance to students with disabilities because, as one student's submission pointed out, it is often difficult for students with disabilities to hold a job as well as go to school, so that students with disabilities are often dependent on government aid to complete their schooling.

Numerous concerns were raised during the consultation with respect to the operation of the BSWD. The BSWD is of particular importance to students with disabilities as it is the only student financing program whose purpose is to facilitate equal access to the service of education for students with disabilities by covering costs which are not borne by students without disabilities. Many submissions expressed concerns about the eligibility

requirements of the BSWD, and in particular, the fact that it is tied to eligibility for OSAP, that the student must have a pre-diagnosed disability, and that students who have defaulted on OSAP or are overdrawn are ineligible.

With respect to the requirement that a student be eligible for OSAP in order to qualify for the BSWD, the submission of the LOTF noted that “The requirements [of the BSWD] represent a major barrier for many students with disabilities, whose parents may be able to help with tuition and living costs, but may not be able to cover all the disability specific additional costs”. The final report of the LOTF recommends that eligibility for the BSWD be separated from OSAP so that all students with disabilities can access bursary funds equally. The financial consequences for students with disabilities who do not qualify for OSAP are significant, despite the existence of other government programs: York University’s Psychiatric Dis/Abilities Program notes that while students who are eligible for OSAP can receive up to \$10,000 from the BSWD for disability-related costs, students who are not eligible for OSAP and receive either the OSBP or the provincial portion of the BSWD can receive only \$2,000 for disability-related costs.

Only students with a pre-diagnosed disability are eligible for BSWD. This poses a barrier for access for students who must self-fund their diagnosis. The LOTF, for example, points out that the diagnosis of learning disabilities is not covered by any Provincial health or assessment plan and that many people with learning disabilities therefore never have their condition fully and appropriately diagnosed.¹¹⁹ Rules, preconditions, policies or practices that treat persons with non-evident disabilities differently from other persons with disabilities are *prima facie* discriminatory.¹²⁰

Students who receive an over-award under OSAP more than once cannot return to school until it is paid back. Over-awards often occur when students reduce their course loads after the school term commences. There is no process for taking into account disability-related causes for reducing course loads. As ARCH has pointed out, this has a discriminatory effect on students with health-related or mental disabilities, who are more likely to withdraw from classes. The submission of the York University Psychiatric Dis/Abilities Program notes that this policy does not recognize the episodic nature of psychiatric illnesses, and as a result, students with psychiatric disabilities may be denied access to post-secondary education.

Concerns were also raised with respect to the restrictions on the types of services funded. For example, BSWD funding is not available for students who wish to attend private post-secondary institutions. As well, the York University Psychiatric Dis/Abilities Program submission expressed concerns that the BSWD does not cover the cost of medications. The submission states that “There are many students with psychiatric disabilities who need medication, specifically to help them concentrate while they are at school. This support is as critical as a computer and other software materials, which the bursary does cover.”

The BSWD, like other bursary assistance, is considered taxable income under federal tax law. This has been challenged unsuccessfully in two cases. *Wignall v. Canada (Department of National Revenue)*¹²¹ is a complaint under the *Canadian Human Rights Act*. The Tribunal concluded that this taxation practice, although perhaps unfair, was not

a discriminatory practice in the provision of a service. The decision is currently under appeal to the Federal Court of Canada, Trial Division. In a recent decision,¹²² the Tax Court of Canada dismissed a *Charter* challenge on this point, concluding that the taxation of the bursary was not differential treatment, and that the source of the problem was the refusal of the education service offered to provide the necessary accommodation without cost to the plaintiff. Both decisions indicated that it may be problematic for education providers to require students to resort to taxable grants in order to access disability-related services.

Finally, the very complexity of these overlapping programs can pose difficulties for students with disabilities. It may be very difficult for students to ascertain what their entitlements actually are. In some cases, program requirements actually conflict. The City of Toronto Community Advisory Committee on Disability gives as an example the issue of summer work. The OSAP program expects that students will contribute to the cost of their education, for example through part-time or summer work. However, students who receive ODSP benefits are limited in the number of hours that they are permitted to work.

The Supreme Court of Canada decision in *Eldridge*¹²³ states that, when governments provide services, they have an obligation to take positive steps to ensure that members of disadvantaged groups, such as persons with disabilities, benefit equally from these services, subject to the undue hardship standard. Having undertaken programs such as the BSWD, the government is obliged to design it in an inclusive manner, taking into account the needs of all students with disabilities. If the BSWD requirements have an adverse impact on students with particular types of disabilities, this may raise issues under the *Code*. Further, blanket approaches to accommodation, that do not take into account the unique and individual needs of persons with disabilities, are likely inappropriate.

The Commission's *Disability Policy* states that where outside sources of funding for accommodation costs (such as the BSWD) are available to persons with disabilities, a service provider can expect that these resources will be accessed first. However, such resources should most appropriately meet the accommodation needs of the individual, including respect for dignity. The primary responsibility for accommodation remains with the post-secondary institution. For example, in the case of *Howard v. University of British Columbia*¹²⁴, the complainant, who was deaf, wished to obtain his teaching certificate from the University of British Columbia. To do so, he required interpretation services during lectures, which would have cost \$9,000 for his prerequisite courses, and \$40,000 per year during the teachers' program. He was unable to obtain funding from the government's Vocational Rehabilitation Services. The University provided him with \$1,000 towards the cost of interpretation, and he obtained a \$2,000 forgivable loan from the Ministry of Advanced Education. Unable to obtain funding, he withdrew from the program. Before the Tribunal, the University argued that providing funding for interpretation was the responsibility of the government, not the University; the Tribunal ruled that denial of interpretation amounted to denial of access to the University's educational services. The Tribunal noted that while it may have been open to the complainant to allege discrimination against the government with respect to gaps in

funding for interpreters, that did not absolve the University from responsibility. The Tribunal concluded that while the cost to the University of providing for these types of services from its discretionary funds would be significant, the University did not provide evidence to show that the University's operations would have been seriously affected had it provided interpretation services to the complainant.

ACTIONS REQUIRED:

Post-Secondary Institutions

- (1) Prepare accessibility plans, that, in addition to meeting requirements under the ODA:
 - set goals, identify steps being taken and report on achievements made with respect to adhering to the principles of inclusion by design, barrier removal, most appropriate or next best or interim accommodation of remaining needs, individualization, confidentiality, and shared responsibilities in the accommodation process. Accessibility plans should also report on policies, procedures and mechanisms for implementation, monitoring, education and training, input, dispute resolution and accountability;
 - include timelines, performance measures and accountability structures; and
 - respect the dignity and the right to integration and participation of students with disabilities in the process of planning for and implementing accessibility.
- (2) Private post-secondary institutions, including private career colleges, private universities, and professional accreditation bodies should also develop and make public accessibility plans that incorporate the broad definition of accessibility outlined above; include timelines, performance measures and accountability structures; include monitoring and review mechanisms; and are developed through a process that respects the dignity and right to integration and full participation of persons with disabilities.
- (3) Review their policies with respect to part-time students, with a view to identifying and removing barriers to students with disabilities.

Government

- (1) Review funding programs for students to ensure that their requirements do not directly impose barriers or adversely discriminate against students with disabilities, and that students with disabilities have timely access to appropriate accommodation.
- (2) Review communications vehicles regarding programs for students with disabilities to ensure that students with disabilities are able to access information about funding in a timely, dignified and effective manner.
- (3) Require private career colleges to prepare and make public accessibility plans, as a condition of their licensing. These accessibility plans should incorporate the broad definition of accessibility outlined above; include timelines, performance measures and accountability structures; include monitoring and review mechanisms; and are developed through a process that respects the dignity and right to integration and full participation of persons with disabilities.

Disability and Other Forms of Discrimination

As discussed in the first section of this Report, students with disabilities may also belong to groups that have been discriminated against historically on grounds other than disability. Discrimination must be viewed in its context to be fully understood.

For example, single parents may face limitations on their educational options over and above those related to their disabilities, such as lack of access to subsidized day care. Individuals with disabilities from northern First Nations communities may have to leave their community support systems in order to access specialized educational programs in southern Ontario. As well, consultees told the Commission that Aboriginal students tend to be over-identified and misidentified with disabilities, and denied access to post-secondary education as a result:

One [Native Student Centre] reported in a recent meeting that 100% of their Aboriginal post-secondary students had previously been IPRC'd by catchment area boards, perceiving this as a stereotype, if not racist practice equating cultural differences and ESL with mis-represented and virtually compulsory special education placement.

The IDIA raised concerns about the impact of the Test of English as a Foreign Language (TOEFL) on persons with language-based disabilities, or whose first language is sign language. The TOEFL test is required for any person wishing to study in Ontario whose first language is not English, and who has not attended a Canadian educational institution for at least three years. The IDIA notes that there are no provisions in place to accommodate individuals with disabilities whose test performance may be affected by their disability and to ensure that their performance is fairly evaluated.

The LOTF has identified problems with gender-based discrimination among students with learning disabilities whereby girls and women suffer from diminished educational opportunities. Pilot projects by the LOTF at the post-secondary level indicated positive results from greater openness to self-referral.

ACTIONS REQUIRED:

Post-Secondary Institutions

- (1) Take steps to move away from reliance, in their admissions procedures, on tests that fail to provide appropriate accommodation and confidentiality for students with disabilities. Include information on intersectional issues in training programs on disability for staff and faculty.

Test Providers

- (2) Implement policies and procedures to ensure that students with disabilities receive appropriate, dignified and confidential accommodations to testing procedures.

Negative Attitudes and Stereotypes

During the consultation, the Commission heard of ongoing issues at post-secondary institutions with respect to negative attitudes and stereotypes about students with disabilities. The IDIA stated that:

Universities have placed responsibility for improved awareness, understanding and sensitivity in the hands of offices that provide support for students with disabilities. Limited staff resources, increased numbers of students have made this process difficult to achieve. As a result, some faculty have been less exposed to information pertaining to myths and stereotypes about students with disabilities. Such limitations lead to comments such as “learning disabilities do not exist, there are just lazy students who watch too much television”.

One submission noted that there are particular barriers for students with non-evident disabilities, stating that, “When asking for help students with invisible disabilities are often approached with questions that are degrading ... Questions such as ‘What’s wrong with you? You look fine.’” The submission of the CCDI raised concerns that “Poor awareness and knowledge of disabilities and disability issues on the part of faculty can lead to discrimination in the academic evaluation of students as well as negatively affect faculty’s willingness to provide accommodations”. The submission of the Learning Disabilities Association of Ontario (LDAO) states that:

Students with learning disabilities often face a negative attitude within the post-secondary sector, where teaching faculty often do not understand that students with learning disabilities are just as able to achieve the required outcomes as their non-disabled peers, provided that they are assured access to the requisite appropriate accommodations.

Consultees identified a number of strategies for addressing these issues. First, disability awareness training should be a mandatory part of professional training for all teachers and faculty. Second, training on disability issues should not be the sole province of the offices for students with disabilities. Responsibility for training on disability issues should also be incorporated into general instructional development activities for faculty and staff, and should be available on an ongoing basis throughout the school year. Finally, the Commission itself can play an important role, by developing and communicating clear guidelines regarding the roles and responsibilities of faculty and staff. The submission of the CCDI recommends that:

Guidelines could highlight the duty of faculty to respect the dignity and confidentiality of students with disabilities, as well as to follow accommodations recommended via the accepted policies and procedures of the faculty’s institution. For example, when faculty speak about a student’s disability in front of their class or other students, disclose a student’s personal disability information without permission to other faculty/staff, leave written information regarding a student’s disability in a public place or in plain view, or use names when discussing general disability issues, they fail to respect the confidentiality and dignity of students with disabilities.

ACTIONS REQUIRED:**Post-Secondary Institutions**

- (1) Take steps to develop and implement appropriate education strategies for faculty and staff with respect to disability-related issues.

Accommodation Process**Background**

The accommodation process for post-secondary students with disabilities can be a complex one. 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 the *Code*. This means that accommodation processes must meet the standards set out in the *Disability Policy*: they must respect the dignity of persons with disabilities; they must consider, assess and accommodate persons individually; and they must promote the integration and full participation of persons with disabilities. 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.

Post-secondary institutions have developed a wide range of delivery methods and structures to meet these obligations. As well, as noted in the previous section on funding, financial support for accommodations for post-secondary students is provided through a wide variety of programs, with complicated inter-relationships.

All publicly-funded post-secondary institutions in Ontario have centres or offices for students with disabilities.¹²⁵ However, service delivery models vary widely across the province. Some provide test and exam accommodations, arrange textbooks in alternative formats, and provide career and employment counselling services. Others have a more decentralized delivery method, acting as experts in the area of disability, communicating with other campus departments, and supporting efforts to make the entire institution more accessible to all students, while relying on other departments to take shared responsibility for support. Although the creation of offices for students with disabilities has been a very positive development in ensuring access and accommodation for students with disabilities, they are not, of course, the entire answer to a post-secondary institution's responsibilities to students with disabilities under the *Code*.

Access to Information

The complexity and variety of services and supports for students with disabilities can make it difficult for students to find and access the services that they need. This may be especially difficult for students making the transition from the much more structured accommodation processes of the primary and secondary educational systems. The IDIA notes that "systems are so large that individuals can easily be lost in a sea of administrative bureaucracy". According to the CCDI:

It is not uncommon for a number of government departments to be involved in aspects of a student's education, and the conflicting and contradictory policies and rules of each can not only be difficult to navigate, but can have negative consequences for students with disabilities.

The CCDI therefore recommends that government departments harmonize the delivery of programs to students with disabilities so that students are not disadvantaged because they access the services of more than one department, or because they fall under one department's jurisdiction, rather than another. With respect to service delivery within post-secondary institutions, the IDIA stated that work towards a provincial standard of service delivery could be extremely beneficial to students with disabilities.

The submission from York University indicated that there is a dearth of information available on best practices in accommodating students with disabilities for students in post-secondary education, particularly in light of the continually evolving body of scientific and academic knowledge regarding certain forms of disability.

York University's submission also noted that it has experienced difficulty in the accommodation process with timing issues. Funding decisions must often be made long before the University knows how many students will require disability-related accommodations or the nature of the accommodation needs that must be met. Even apart from funding issues, the University requires sufficient lead time to ensure that accommodations will be available when needed.

Dispute Resolution

A number of submissions raised issues relating to dispute resolution – for example, where a student and a faculty member cannot agree on a disability-related accommodation. Dispute resolution processes vary between institutions; in general however, they can be characterized as less formal than those at the primary and secondary level. Two issues were raised with respect to dispute resolution processes for accommodation-related issues: timeliness and onus of proof.

With respect to timeliness, concerns were raised that in some cases, dispute resolution processes take considerable time to pursue. The submission from ARCH indicates that:

Complaint procedures and processes at colleges and universities may take considerable time to pursue. We have received calls from students who have lost their right to pursue their disability-related discrimination complaint at the Commission due to the passage of time. This is a procedural concern that should be addressed by the Commission and the institutions, to ensure that recourse to the Commission is not denied.¹²⁶

With respect to onus of proof, submissions have raised concerns that, in practice, some students are being required to prove that their proposed accommodations are in accordance with the *Charter* and the *Code* and could not in any circumstances amount to undue hardship. The Commission's *Disability Policy* is clear that, where there is a dispute regarding a proposed accommodation, and a service provider alleges undue

hardship, the onus is on the provider to demonstrate it. It is not the responsibility of a student seeking accommodation to prove that a proposed accommodation *would not* cause undue hardship.¹²⁷

Dispute resolution procedures that are not timely or effective could amount to a failure of the duty to accommodate.

Confidentiality

Confidentiality of information is an important consideration in the accommodation process. The *Disability Policy* provides that persons with disabilities are not necessarily required to disclose private or confidential matters. Information should be disclosed to the accommodation provider only as it pertains to the need for accommodation and any restrictions or limitations. Documentation supporting the need for a particular accommodation should be provided only to those who need to be aware of the information.

A number of concerns regarding confidentiality were raised during the consultation process. The duty to accommodate exists only for needs that are known. Where a person with a disability is requesting accommodation, the accommodation provider is entitled to verify that a disability exists, and the nature and extent of relevant restrictions or limitations. Reports from experts may be of assistance in determining the most appropriate accommodation for a student with a disability.

In order to avoid labelling or stereotyping, it is essential that confidentiality be maintained with respect to this type of information. Several submissions suggested as a best practice that documentation regarding the verification of a disability and the nature and extent of restrictions and limitations should be maintained in confidence by each institution's office for students with disabilities. Disclosure to faculty or staff of the post-secondary institution should be on a need-to-know basis only, and at the choice of the student. The submission of the CCDI states that:

While disclosing the type of disability can lead to labelling and stereotyping, it can also assist faculty in understanding the learning needs of their students. Many of the accommodation practices implemented for college students are based on research and intervention practices with specific types of disabilities, and thus, knowing the type of disability can be important in determining the type of accommodations and services which would be beneficial.... However, disability offices recognize that the decision to disclose information to faculty regarding the type of disability is the responsibility of the student rather than of the disability student office. Thus, information regarding a student's type of disability should be disclosed to faculty/staff by the student or, alternatively, by the disability service office, but only with the student's informed consent (where informed consent implies a discussion of the risks and benefits of disclosure of type of disability).

The Commission has grave concerns regarding the disclosure of disability-related information, including accommodations received, on transcripts, entrance test result forms, or licensing exam result forms. For example, the submission of the CCDI states

that the Law School Admissions Test (LSAT), when sending test scores of testees who received accommodations to law schools, indicates that the test was not completed under standard conditions, and that therefore the test scores should be interpreted with great sensitivity. This effectively notifies the law schools of the applicant's disability, as well as implicitly undermines the validity of the score received. The resulting decision on the application may potentially be biased.

ACTIONS REQUIRED:

Post-Secondary Institutions

- (1) Work together to develop and share best practices for service delivery and supports for students with disabilities.
- (2) Develop and implement dispute resolution procedures for accommodation requests that comply with the *Code* and the *Disability Policy*.
- (3) Institute and communicate to staff and faculty confidentiality guidelines with respect to students with disabilities that comply with the requirements of the *Code* and *Disability Policy*.
- (4) Take steps to move away from reliance, in their admissions procedures, on tests that fail to provide appropriate accommodation and confidentiality for students with disabilities.

Appropriate Accommodation

Defining Appropriate Accommodation

Background

There are a wide variety of accommodations provided to students with disabilities at the post-secondary level. These include:

- Accommodations to improve the physical accessibility of post-secondary facilities, including classrooms, resource centres, and student housing;
- Provision of, or training on adaptive technologies;
- Support services, such as assessment or advice on learning strategies;
- In-class support such as, for example, notetakers; and
- Modifications to evaluation methodologies, such as extended test-taking time, or alternative examination formats.

Submissions revealed ongoing debate among stakeholders regarding the appropriateness of various forms of accommodation, often expressed as discussions of “academic freedom” or “academic integrity”. For example, the submission from York University states that:

Even with efforts to accommodate, there is concern that there remain barriers that cannot be overcome without inappropriately compromising the academic integrity of the University and its programs. The curriculum is set by those who determine what knowledge is needed to have mastery of a given subject matter or area. The standard of mastery of the curriculum for evaluation purposes is also set.

Therefore, there are issues of academic integrity and academic freedom that prevent the relaxation of the curriculum or the overlooking of academic standards as a means of accommodating students with disabilities.

On the other hand, the submission from ARCH notes that “The concept of ‘academic freedom’ ... is really a doctrine designed to protect academics from censorship Academic standards, while serving a legitimate function, are not protected from human rights scrutiny.”

Academic Freedom

The Commission has taken the position that “academic freedom is unrelated to the duty to accommodate and should not be a defence to accommodating persons with disabilities.”¹²⁹ The purpose of academic freedom is to protect the special role of institutions of higher education in the free search for truth, and its free exposition. As such, it relates mainly to freedom of research and of expression in instruction. It will be rare for a disability-related accommodation to impinge on academic freedom. The submission of the CCDI provides an example where a student’s disability requires him or her to tape record lectures, and faculty are concerned that the student is in this way obtaining an unauthorized copy of their ideas. However, the purpose of the accommodation is to permit the student to benefit from lectures equally with other students. That is, the student would not be entitled to put the tape recordings to any use to which other students could not put their lecture notes.

Academic Integrity

Issues surrounding academic integrity are more complex. In this context, it is used to refer to the maintenance of standards for curriculum, evaluation, and student achievement. The expressed concern is that modifications to curriculum or evaluation methodologies will dilute standards and render them less meaningful. For example, the submission of the IDIA notes that “faculty may determine that the use of memory aids or queue sheets, as well as take home or oral tests/exams, may be unacceptable accommodations because the nature of the test/exam does not lend itself to these accommodations.” The York University submission stated that “Whatever is designed for a student must be a program that gives sufficient comfort to the teaching faculty that he/she can provide the curriculum and suitable and fair evaluation, consistent with the University’s standards.” From the viewpoint of the LOTF, the use of appropriate accommodations does not interfere with the maintenance of the integrity of the curriculum or of the academic standards of programmes or courses. Appropriate accommodations should not lead to lowered standards or outcomes: rather, an appropriate accommodation will enable the student to successfully meet the essential requirements of the programme, with no alteration in standards or outcomes, although the manner in which the student demonstrates mastery, knowledge and skills may be altered.

The Commission’s *Disability Policy* indicates that the aim of accommodation is the integration and full participation of persons with disabilities in the life of the community. Barriers must be prevented and removed, so that persons with disabilities can access

and benefit from their environment and face the same duties and requirements as everyone else, with dignity and without impediment. Thus, the aim of accommodation in a post-secondary educational context is to provide equal opportunities to all students to enjoy the same level of benefits and privileges and meet the requirements for acquiring an education. Based on these principles, an accommodation will be considered appropriate where it will result in equal opportunity to attain the same level of performance, or enjoy the same level of benefits and privileges experienced by others, or if it is proposed or adopted for the purpose of achieving equal opportunity and meets the individual's disability-related needs.

A consideration of the appropriateness of an educational accommodation begins with an analysis of the nature of the educational right at issue. This will differ depending on the nature of the educational service offered. For example, at the primary and secondary levels of education, there is a statutory right to education for all. Each child is entitled to the opportunity to develop his or her unique abilities and talents. The goals of post-secondary education are different, and may be narrower in scope. The right may therefore be defined differently.

The next step is to consider what the essential duties or requirements attending the exercise of the right are. While courts and tribunals have provided little guidance on the nature of essential duties, terms that have been used include indispensable, vital, and very important. Thus, a requirement should not lightly be considered to be essential, but should be carefully scrutinized. This includes course requirements and standards. For example, it may likely be an essential requirement that a student master core aspects of a course curriculum. It is much less likely that it will be an essential requirement to demonstrate that mastery in a particular format, unless mastery of that format (e.g., oral communication) is also a vital requirement of the program.

Educators must provide accommodation, up to the point of undue hardship, to enable students to meet these essential requirements.

Universal Design

In designing educational programs, educators must keep in mind the principles of universal design. That is, course curriculum, delivery methods, and evaluation methodologies should be designed inclusively from the outset. This may mean providing a variety of ways for demonstrating knowledge and skills – for example, by giving students the option of writing a paper or making a presentation. It may mean creative use of technology, such as putting materials online, or selecting software that is compatible with screen readers. When courses are online, web-based, or CD based, accessibility issues should be addressed up-front, in the development stage. Universal design can be of benefit to all students, not only students with disabilities. The LDAO recommends that educators incorporate principles of inclusive design into their teaching methodology, in order to facilitate learning for all non-traditional learners, as well as students with disabilities. Even where inclusive design principles have been thoroughly

applied, educators should keep in mind that differential treatment may still be required in some cases to achieve equal opportunity to enjoy the same level of benefits and privileges and meet the essential requirements of the learning environment.

Access to Accommodation

Even where there is no dispute regarding the appropriateness of an accommodation, students may have difficulty accessing it. For example, students may have difficulty even finding out what services and supports may be available to them. As one student stated:

Students shouldn't have to search to find out what services are available to us outside our school, within the community and what we have rights to. I personally didn't think I had any right to any of the services I am receiving now. I just thought it was my fault and I would have to deal with it.

Even where accommodations are available, timeliness may be an issue. For example, a number of stakeholders raised concerns about the availability of textbooks in alternative formats. The *Report of the Task Force on Access to Information for Print Disabled Canadians* noted that access to post-secondary texts in alternative formats varies widely between post-secondary institutions, despite the extent of the need. It also noted that Canada is the only member of the Organisation for Economic Cooperation and Development (OECD) that does not financially support the production of multiple alternate formats on a continuing basis.¹²⁹ Ontario's MTCU has operated a transcription services fund since 1983 to assist with the production of print-alternate materials, such as braille, tape, large print, and CD-rom. However, continual increases in demand for this service have outpaced funding increases. The National Federation of the Blind expressed concerns that many professors at post-secondary institutions decide their list of required reading very close to the start of the course, and bookstores often wait until the beginning of the term to stock textbooks, making it very difficult for blind students who must arrange for transcription of books into an alternative format. They recommended that post-secondary institutions require their instructors to develop their book lists early enough that transcription can be arranged. The CCDI and the IDIA recommend that the onus be placed on textbook publishers to ensure that alternative format textbooks are provided to bookstores in a timely fashion.

Similar concerns were raised with respect to the timely availability of class handouts in alternative formats.

As well, the general dearth of individuals in the wider community to act as transcribers, interpreters and other assistive professionals creates a barrier, even where money is available to provide their services to students. This problem is exacerbated in some parts of Northern Ontario. The Canadian Hearing Society noted that students in Northern Ontario have difficulty accessing interpreters, and may find themselves forced to move to Southern Ontario because that is where services are available. According to the Huron-Superior Catholic District School Board:

In Northern Ontario, there is a two-year waiting list to see a psychologist for

assessment. Many institutions require recent psychological assessment reports before the student begins post-secondary education. Without this documentation, the student is denied access to supports or has to go through a lengthy evaluation process, often at the expense of the families.

ACTIONS REQUIRED:

Post-Secondary Institutions

- (1) Encourage educators to adopt the principals of universal design when developing course curricula, and delivery and evaluation methodologies.
- (2) Ensure that staff and faculty comply with the requirements of the *Code* and the *Disability Policy* with respect to appropriate accommodation.

Government

- (3) Federal and provincial subsidies be made available only to publishers which provide access to alternative formats simultaneous with print publication.

Textbook Publishers

- (4) Comply with their duties as service providers under the *Code* by ensuring that texts are available in both traditional and alternative formats.

Undue Hardship Standard

As discussed previously, whether an accommodation is appropriate is a completely separate and distinct determination from whether that accommodation would result in undue hardship. Where an accommodation is appropriate, but would result in undue hardship, the provider is required to consider phased-in accommodation, accommodation at a later date, next-best accommodations, or interim accommodations.¹³⁰

The threshold for undue hardship is high. This is necessary to ensure that the aims of the *Code* are achieved. The submission of the LDAO states:

As a caring society, we have an obligation to ensure that all vulnerable members of our society are guaranteed access to services, supports and accommodations to help them overcome the negative impacts of their vulnerability. When it comes to providing an enabling education to students with disabilities, it is society's obligation to help them progress towards independence and a reduction of their vulnerability.

Because of the complexity of the provision of accommodation to post-secondary students with disabilities, some confusion exists with respect to who exactly has responsibility for the cost and provision of accommodation for students with disabilities. Is it disability service departments, each individual college or university, or the MTCU?

As discussed in the Undue Hardship Standard section in the first part of this Report, the Commission's *Disability Policy* states that:

Costs of accommodation must be distributed as widely as possible within the

The Opportunity to Succeed: Achieving Barrier-free Education for Students with Disabilities

organization responsible for accommodation so that no single department, employee, customer or subsidiary is burdened with the cost of an accommodation. The appropriate basis for evaluating the cost is based on the budget of the organization on the whole, not the branch or unit in which the person with a disability works, or to which the person has made an application. In the case of government, the term “whole operation” should refer to the programs or services offered or funded by the government.

Ultimately, it is the service provider who is responsible for ensuring that services are available to all students, without discrimination because of disability. As with elementary and secondary institutions, the determination of who the service provider is in a particular situation will be a factual determination, and will vary from case to case. In most cases, it will be the post-secondary institutions, in some it may also be the MTCU.¹³¹

However, disability service providers within post-secondary institutions are not themselves providers of the service of education. The creation of offices for students with disabilities is one way in which post-secondary institutions have attempted to meet their duty to provide equal education. However, the responsibility for accommodation rests with the post-secondary institution as a whole, and not simply with the disability service providers.

The undue hardship standard applies to all service providers, whether public or private. That is, it is not open to private career colleges, private universities or professional licensing bodies to refuse to accept students with disabilities, or to ask them to waive their rights to accommodation as a precondition of entrance, unless they can meet the undue hardship standard set out in the Commission’s *Disability Policy*. Whether or not private institutions have fewer resources than public universities and colleges, the ultimate standard for costs is the same: whether there are quantifiable costs related to accommodation that are so substantial that they would alter the essential nature of the enterprise, or so significant that they would substantially affect its viability.

ACTIONS REQUIRED

Post-Secondary Institutions

- (1) Reaffirm their primary responsibility, as institutions, to ensure that they provide equal, non-discriminatory educational services to students with disabilities.

Government

- (2) Take steps to ensure that students with disabilities have access to sufficient funding to ensure equal access to post-secondary education.

ROLES AND RESPONSIBILITIES

Responsibility for addressing the needs of students with disabilities is assigned to different parties including the Ministries of Education and of Training, Colleges and Universities, post-secondary institutions, schools and school boards, educators, specialized professionals, parents and students themselves. In the private education system, each individual school or post-secondary institution, as a service-provider, is responsible for accommodating students with disabilities up to the point of undue hardship.

The accommodation process is a shared responsibility. In carrying out the responsibilities associated with accommodating students with disabilities, all parties involved must abide by human rights standards, procedures and principles set out under the *Code* and outlined in the Commission's *Disability Policy*. In particular, the process that is established to accommodate students with disabilities must meet the procedural requirements of the duty to accommodate and substantive accommodation must be provided to the point of undue hardship. In addition, the principles of individualized accommodation, respect for dignity, and integration (in most instances) and full participation must be respected.

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. Throughout the consultation, the Commission heard from participants that students with disabilities often fall victim to disputes between the various parties responsible for accommodation. For example, in its submission the Special Education Advisory Committee of the Huron-Superior Catholic District School Board stated: "Turf wars between the educational systems, unions, government agencies, community agencies and ministries are affecting the efficiency of providing good programs for people with disabilities."

Similarly, consultees expressed concerns that students with disabilities are paying the price for a larger funding dispute between the Ministry of Education and the school boards. Parents stated that they do not care where the money comes from as long as their children receive the accommodation to which they are entitled.

Government

Government has a significant role to play in ensuring equal opportunity for students with disabilities. The Supreme Court of Canada has stated that, 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.¹³² Funding, whether provided directly to students, or to educational institutions, remains a major issue in ensuring that education is accessible for students with disabilities. Funding structures should not themselves create barriers to students with disabilities. Through legislation, such as the *ODA*, the provincial government can play a major role in promoting and supporting accessible, non-discriminatory post-secondary education. The recent Learning Opportunities Task Force has been lauded as an example of the type of

initiative that the government can undertake to make a real difference to students with disabilities. The programs and services offered by government for students with disabilities should be clearly communicated, harmonized, and reasonably straightforward to access.

The *Education Act* and accompanying regulations set out a process for identifying and accommodating disability-related needs in the publicly-funded primary and secondary school system. The Ministry of Education is responsible for the *Education Act*. Under the *Act*, the Ministry is responsible for ensuring that all exceptional pupils in Ontario have available to them appropriate special education programs and services without payment of fees. More specifically, the Ministry is responsible for funding levels and structures, legislating procedures, and creating appeal and monitoring mechanisms.

The Commission heard that government bureaucracy makes it difficult to access services, at the primary and secondary, and at the post-secondary level. For example, the Ontario Association of Speech-Language Pathologists and Audiologists wrote in their submission: “Three ministries (Education, Health and Community and Family Services) share responsibility for services for children with speech and language disorders. Fragmentation in service delivery has created a complex system for families who need services. Many children ‘fall between the cracks.’” The Commission has heard the same concerns about the delivery of Intensive Behavioural Intervention (“IBI”) treatment for children with autism.

In its *1993 Annual Report*, the Office of the Provincial Auditor of Ontario recommended that “The government should ensure full co-operation among the ministries that provide the complete range of services required by children with special needs. It should also consider reallocating the responsibility for providing these services among the ministries involved, in order to deliver special education in a more effective, integrated and cost-efficient manner.”¹³³ In its *2001 Annual Report*, the Provincial Auditor concluded that this recommendation had not been implemented and made a further recommendation in this area.

It should also be noted that the *ODA* establishes reporting requirements for, among others, the Ministry of Education, the Ministry of Training, Colleges and Universities, as well as school boards, colleges and universities themselves. These organizations are legally required to consult persons with disabilities and others and prepare, update and make public an annual accessibility plan that addresses the identification, removal and prevention of barriers to people with disabilities.

During the Consultation, some educational institutions reported that they were unclear about their responsibilities under the *ODA* as well as the relationship between the *ODA* and the *Code*. The *Code* has primacy over the *ODA*. Preparation of annual accessibility plans under the *ODA* complements rather than removes existing obligations under the *Code*.

School Boards

As part of its obligation to provide special education programs and services to exceptional pupils, a school board is required to develop and maintain a special education plan, to review it annually, to amend it from time to time to meet the current needs of exceptional pupils, and to submit any amendments to the Ministry for review.¹³⁴ One of the purposes of the special education plan is “to inform the Ministry of Education and the public about special education programs and services that are provided by the board in accordance with legislation and ministry policy on special education.”¹³⁵

School boards are also required to establish Special Education Advisory Committees (SEACs). SEACs make recommendations on the establishment, development and delivery of special education programs and services for exceptional pupils; participate in a board’s annual review of its special education plan, annual budget and financial statements.

Primary and Secondary School Educators

At the primary and secondary levels, under the *Education Act*, school principals are assigned responsibility for referring students to an IPRC and, after the IPRC process is complete, for preparing an IEP for the student. Principals are also responsible for ensuring board policies and procedures about special education are communicated to staff, students and parents.

Teachers work with Special Education Teachers to acquire and maintain up-to-date knowledge of special education practices and with parents to develop an IEP for an exceptional pupil if appropriate. Teachers are responsible for many of the day-to-day aspects of accommodation, for assessing students’ progress, and for communicating with parents.

The Ministry of Education has further outlined the specifics of what it sees to be the respective roles and responsibilities of those involved in the special education system in its policy document entitled *Standards for School Boards’ Special Education Plans*.¹³⁶

Part 3.4 of the *Disability Policy* states that all parties to the process “should co-operatively engage in the process, share information, and avail themselves of potential accommodation solutions.”¹³⁷ It also contains general principles regarding the duties and responsibilities in the accommodation process which, although described in the employment context, apply also to educational services. For example, education providers (including the Ministry of Education, school boards, schools, principals, teachers and special education professionals) are required to:

- obtain expert opinion or advice where needed
- take an active role in ensuring that alternative approaches and possible accommodation solutions are investigated, and canvass various forms of possible accommodation and alternative solutions, as part of the duty to accommodate

- maintain confidentiality
- limit requests for information to those reasonably related to the nature of the limitation or restriction so as to be able to respond to the accommodation request
- grant accommodation requests in a timely manner, to the point of undue hardship, even when the request for accommodation does not use any specific formal language; and
- bear the costs of any required medical information or documentation.

While many of these requirements may be met through the formal processes established under the *Education Act*, it should not be assumed that in all cases they will. The *Education Act*, its regulations, and the Ministry of Education's policy statements are all subject to human rights law and policy. So too are the local-level accommodation practices that occur in the school setting.

Post-Secondary Institutions

As a number of submissions pointed out, the duty to accommodate rests on the educational institution as a whole – not just on the specific office for students with disabilities. Post-secondary institutions are responsible for ensuring that their facilities and services are accessible; that the environment is welcoming and non-discriminatory; that appropriate, effective and dignified accommodation processes are in place; and that students who require accommodations because of their disabilities are accommodated to the point of undue hardship. All members of the post-secondary institution have a role to play. For example,

- Faculty and staff have a duty to educate themselves about disability-related issues, to interact with students in a non-discriminatory manner, to engage in the accommodation process, and to provide appropriate accommodation to the point of undue hardship.
- Staff and faculty responsible for designing or developing new or revised facilities, services, policies, processes, courses, or curricula have a responsibility to ensure that these are designed inclusively, with the needs of persons with disabilities in mind.
- Clear and reasonable processes and guidelines for seeking accommodation should be in place at all post-secondary institutions, and these should be clearly communicated to all students.
- The process of accommodation, as well as the outcome, should be respectful of the dignity of the persons affected, and should take into account the importance of integration and full participation. Any planning for accessibility should recognize that persons with disabilities are important stakeholders in the process.

As well, the post-secondary institution still has a responsibility, short of undue hardship, to cover the cost of the required accommodation, unless there is sufficient and non-discriminatory outside funding available.¹³⁸

Students with Disabilities

Students with disabilities, or their parents/guardians where applicable, also have responsibilities in the accommodation process. At the post-secondary level, the CCDI has noted, “Both students and disability service officers have responsibilities in the provision of accommodations and services: students to communicate their accommodation needs in a timely fashion, and disability service offices to articulate reasonable procedures and to clearly communicate the procedures to follow in order to access accommodations”.

The *Disability Policy* provides guidance on the responsibilities of students seeking accommodation. For example, a student with a disability, or his or her parent or guardian, is required to:

- advise the accommodation provider of the disability (although the accommodation provider does not generally have the right to know what the disability is);
- make his or her needs known to the best of his or her ability, preferably in writing, in order that the person responsible for accommodation may make the requested accommodation;
- answer questions or provide information regarding relevant restrictions or limitations, including information from health care professionals, where appropriate, and as needed;
- participate in discussions regarding possible accommodation solutions;
- co-operate with any experts whose assistance is required to manage the accommodation process or when information is required that is unavailable to the person with a disability;
- meet curriculum standards once accommodation is provided;
- work with the accommodation provider on an ongoing basis to manage the accommodation process; and
- discuss his or her disability only with persons who need to know.

Many students with disabilities, and their parents and guardians, have themselves become experts in their own accommodation needs. Others will need more support and perhaps expert input. Students with disabilities should be given the discretion to manage and direct their own accommodation needs to the degree they see fit. The ultimate responsibility to ensure that accommodation happens rests on the service provider.

At the post-secondary level, concerns have been raised regarding situations where students, because of the particular nature of their disabilities, are unable to clearly communicate their needs, or have difficulty in co-operating with the accommodation process. There may be situations where a student poses a health and safety risk to him or herself or to others that would amount to an undue hardship, or an otherwise appropriate accommodation is impossible to implement in the particular circumstances. However, it is important that education providers not rush to such a conclusion. Further training for staff, or further supports for the student may resolve the issue. The accommodation process must be fully explored, to the point of undue hardship.

ACTIONS REQUIRED:

- (1) That the government better co-ordinate special education service delivery among its different ministries.
- (2) That the Ministry of Education ensure that all parties to the accommodation process are aware of their respective roles and responsibilities, and that in carrying these out, they comply with human rights standards.
- (3) That accessibility plans prepared by ministries, school boards, colleges and universities under their *ODA* obligations should set goals, identify steps being taken and report on achievements made with respect to adhering to the principles of inclusion by design, barrier removal, most appropriate or next best or interim accommodation of remaining needs, individualization, confidentiality, shared responsibilities in the accommodation process. Accessibility plans should also report on policies, procedures and mechanisms for implementation, monitoring, education and training, input, dispute resolution and accountability.
- (4) That the Ministry of Education work with the Accessibility Directorate of Ontario to develop guidelines (a) to help educational institutions prepare their accessibility plans similar to the guidelines already prepared for municipalities, and (b) on standards, timelines and benchmarks for excellence and improvement in accessible education.

The Ontario Human Rights Commission

The submissions received during this consultation reinforced the importance of the Commission's role in advancing equality for students with disabilities in the context of education. The Commission has a broad mandate under section 29 of the *Code* to forward human rights policy through education, monitoring, communication, research, inquiries and initiating investigations. The Commission will continue to forward its mandate in this area under section 29 of the *Code*. In this regard, the Commission makes the following commitments:

Guidelines

- The Commission has publicly committed to developing *Guidelines on Accessible Education* which will address disability and the duty to accommodate in the educational sector. These guidelines will clarify and communicate the roles and responsibilities of all parties with respect to:
 - access to education,
 - combating negative attitudes and stereotypes,
 - determining and providing appropriate accommodations,
 - respecting the confidentiality of persons with disabilities,
 - developing a dignified and effective accommodation process, and
 - applying the undue hardship standard.

The *Guidelines* will also incorporate an intersectional analysis of discrimination.

Monitoring

- The Commission will monitor the Ministry of Municipal Affairs and Housing's progress in implementing amendments to the *Building Code* that will ensure

- greater harmonization between the *Building Code* and the *Human Rights Code*.
- The Commission will monitor progress with the recommended actions required by this Report, and to the extent that issues raised in this Report are not addressed over the next 12 months, the Commission may undertake section 29 inquiries, and will consider the use of its power to initiate complaints.
- The Commission will continue to examine concerns raised with respect to the disproportionate impact of the *Safe Schools Act*, as identified in this Report.

Compliance

- The Commission will continue to ensure priority handling of disability and education complaints at the primary and secondary level involving disputes about access to education services.
- The Commission will consider the appropriateness of naming the appropriate government Ministries as respondents in human rights complaints involving disability and education, particularly those alleging inadequate provision of special education services.
- The Commission will employ an intersectional approach to discrimination in its work, including policy development, compliance, litigation of complaints.

Education

- The Commission will continue to engage in public education activities to promote and encourage an awareness and understanding of a contextualized approach to discrimination analysis.
- The Commission will prepare educational tools, including a tool for teachers on disability issues and human rights obligations in the classroom.

Communications

- The Commission will take steps to ensure that test-providers and publishers are aware of their responsibilities under the *Code*.

APPENDIX A: SUMMARY OF ACTIONS REQUIRED

School Boards and Schools

- (1) Make all classroom materials (handouts, *etc.*) available in alternative formats in a timely manner.
- (2) Review local level practices to determine ways in which accommodation can be provided in a more timely manner.
- (3) Decide curriculum book lists in a timely fashion so that alternative formats may be arranged for students with disabilities.
- (4) Provide interim accommodation for students pending the completion of professional assessments.
- (5) Consistent with the Commission's *Disability Policy*, educators use discretion in their application of the *Safe Schools Act* and must assess whether appropriate accommodation has been provided to a student with a disability, and implement practices of progressive discipline, if discipline is appropriate, before that student can be either suspended or expelled.
- (6) School boards to collect and analyze data on suspension and expulsions under the *Safe Schools Act* to ensure that the *Act* is not having an adverse impact on individuals protected under the *Code*. School boards to ensure that individual data is collected in a manner that is provided for in the Commission's *Guidelines on Special Programs*, and is used only to address inequities and to promote compliance with the *Code*. School boards to take steps to ensure the confidentiality of students in this process.
- (7) Consider the unique situations of students with disabilities who are also members of other historically disadvantaged groups when assessing these students through the IPRC and IEP processes.
- (8) Design and deliver workshops for parents who are new Canadians and/or whose first language is not English to assist them in understanding and participating in the special education system.
- (9) Engage in educational activities designed to raise student awareness of disability issues and to combat negative attitudes and stereotypes about persons with disabilities.
- (10) Arrange and conduct information seminars for parents on the accommodation process and aspects of the special education system more generally.
- (11) School boards and school personnel abide by human rights obligations when engaging in the accommodation process.

Post-Secondary Institutions

- (1) Prepare accessibility plans that, in addition to meeting requirements under the *ODA*:
 - set goals, identify steps being taken and report on achievements made with respect to adhering to the principles of inclusion by design, barrier removal, most appropriate or next best or interim accommodation of remaining needs, individualization, confidentiality, and shared responsibilities in the accommodation process. Accessibility plans should also report on policies, procedures and mechanisms for implementation, monitoring, education and training, input, dispute resolution and accountability;
 - include timelines, performance measures and accountability structures; and
 - respect the dignity and the right to integration and participation of students with disabilities in the process of planning for and implementing accessibility.
- (2) Private post-secondary institutions, including private career colleges, private universities, and professional accreditation bodies should also develop and make public accessibility plans that incorporate the broad definition of accessibility outlined above; include timelines, performance measures and accountability structures; include monitoring and review mechanisms; and are developed through a process that respects the dignity and right to integration and full participation of persons with disabilities.
- (3) Review their policies with respect to part-time students, with a view to identifying and removing barriers to students with disabilities.
- (4) Take steps to develop and implement appropriate education strategies for faculty and staff with respect to disability-related issues.
- (5) Work together to develop and share best practices for service delivery and supports for students with disabilities.
- (6) Develop and implement dispute resolution procedures for accommodation requests that comply with the *Code* and the *Disability Policy*.
- (7) Institute and communicate to staff and faculty confidentiality guidelines with respect to students with disabilities that comply with the requirements of the *Code* and *Policy*.
- (8) That faculty make all classroom materials (handouts, *etc.*) available in alternative formats in a timely manner.
- (9) Take steps to move away from reliance, in their admissions procedures, on tests that fail to provide appropriate accommodation and confidentiality for students with disabilities.
- (10) Encourage educators to adopt the principals of universal design when developing course curricula, and delivery and evaluation methodologies.

- (11) Ensure that staff and faculty comply with the requirements of the *Code* and the *Disability Policy* with respect to appropriate accommodation.
- (12) Reaffirm their primary responsibility, as institutions, to ensure that they provide equal, non-discriminatory educational services to students with disabilities.

Government

General

- (1) That the Ontario *Building Code* be amended to reflect the legal requirements set out in the *Human Rights Code*.
- (2) That, irrespective of when the *Building Code* is amended, the government, and educational institutions comply with the requirements of the *Human Rights Code* and the principles outlined in the *Disability Policy* when constructing buildings, making renovations, and designing programs and services.
- (3) Federal and provincial subsidies be made available only to publishers which provide access to alternative formats simultaneous with print publication.
- (4) Take steps to ensure that students with disabilities have access to sufficient funding to ensure equal access to education.
- (5) That the government better co-ordinate special education service delivery among its different ministries.

Primary and Secondary Levels

- (1) That the Ministry of Education review the adequacy of resources provided to school boards to ensure that school boards are able to provide timely access to appropriate accommodation for all students with disabilities.
- (2) That the Ministry of Education implement and report back on the Provincial Auditor's recommendation that it establish procedures to monitor the costs and effectiveness of special education programs and services.
- (3) That the Ministry of Education review and consider the recommendations contained in the report of the *Task Force on Access to Information for Print-Disabled Canadians*, particularly item 15 which recommends that governments at all levels use "the force of procurement" to promote the adoption of universal design standards for accessibility. The report recommends that only materials complying with such standards should be purchased.
- (4) That the Ministry of Education ensure that educators receive proper training in the use of assistive devices.
- (5) That the Ministry of Education develop a system to better monitor the application of its *Guide for Accommodations, Special Provisions, Deferrals and Exemptions* in the administering of the Grade 10 literacy test, and that it ensure that students are accommodated in accordance with the *Code*.

- (6) That the Ministry of Education establish programs to recruit specialized professionals currently under-represented in the special education system. That this initiative provide incentives to encourage special education professionals to make their services available in rural and remote parts of Ontario.
- (7) That the Ministry of Education follow the recommendation of the Education Equality Task Force to “develop a funding policy for the transportation of students with special needs” and that this policy be in compliance with the *Code*.
- (8) That private schools be required to submit accessibility plans to the Ministry of Education demonstrating efforts to the point of undue hardship to ensure equal access to their services for persons with disabilities.
- (9) That the Ministry of Education review special education practices and procedures to determine ways in which delay can be minimized.
- (10) That the Ministry of Education and school boards review whether students are being required unnecessarily to obtain professional assessments in cases where disability-related needs are already known and established. That, where possible, the Ministry of Education and school boards provide accommodation to students without requiring professional assessments.
- (11) That the Ministry of Education provide appropriate training to educators on how to deal effectively with students whose disabilities may cause them to be disruptive in school.
- (12) That the Ministry of Education, school boards and schools develop programs and activities that promote awareness of the unique experience of students with disabilities who are also members of other historically disadvantaged groups.
- (13) That the Ministry of Education monitor its Professional Learning Program to determine its ability to prepare teachers to deal effectively with disability issues and to treat students with disabilities with dignity, respect and sensitivity.
- (14) That the Ministry of Education, school boards and school staff review special education practices and procedures to ensure that accommodation is governed by the principle of individualization rather than by generalizations about specific disabilities.
- (15) That the Ministry of Education ensure that any system of funding that it administers, ISA or otherwise, complies with human rights law and policy. Specifically, that such a system avoids labelling and focuses on the disability-related needs of each individual in its assessment process.
- (16) That the Ministry of Education review the IPRC process and make any changes necessary to ensure that it meets both the procedural and substantive components of the duty to accommodate as mandated by the *Code* and the Commission’s *Disability Policy*.

-
- (17) That the Ministry of Education develop and implement an effective mechanism for resolving disputes that arise in the accommodation process.
 - (18) That the Ministry of Education provide to parents plain language guides on the accommodation process in multiple languages prior to the IPRC meeting.
 - (19) That the Ministry of Education ensure that educators are developing and implementing an accommodation plan for each student with a disability, in accordance with the Ontario *Human Rights Code* and the Commission's *Disability Policy*, either through the IEP process, or otherwise.
 - (20) That the Ministry of Education collect and analyze data on placements of students with disabilities, in accordance with the Commission's *Guidelines on Special Programs*. That this data be used only for the purposes of addressing inequities and promoting compliance with Commission policy and the *Code*. This data could include: numbers of students in mainstream classrooms versus self-contained classrooms, number of students in each placement according to type of disability, number of students who also belong to other historically disadvantaged groups, *etc.* That the Ministry report its findings to the public.
 - (21) That the Ministry of Education ensure that all parties to the accommodation process are aware of their respective roles and responsibilities, and that in carrying these out, they comply with human rights standards.
 - (22) That the Ministry of Education work with the Accessibility Directorate of Ontario to develop guidelines (a) to help educational institutions prepare their accessibility plans similar to the guidelines already prepared for municipalities, and (b) on standards, timelines and benchmarks for excellence and improvement in accessible education.

Post-Secondary Level

- (1) Review funding programs for students to ensure that their requirements do not directly impose barriers or adversely discriminate against students with disabilities, and that students with disabilities have timely access to appropriate accommodation.
- (2) Review communications vehicles regarding programs for students with disabilities to ensure that students with disabilities are able to access information about funding in a timely, dignified and effective manner.
- (3) Require private career colleges to prepare and make public accessibility plans, as a condition of their licensing. These accessibility plans should incorporate the broad definition of accessibility outlined above; include timelines, performance measures and accountability structures; include monitoring and review mechanisms; and are developed through a process that respects the dignity and right to integration and full participation of persons with disabilities.

Other

Test Providers

- (1) Implement policies and procedures to ensure that students with disabilities receive appropriate, dignified and confidential accommodations to testing procedures.

Textbook Publishers

- (1) Comply with their duties as service providers under the *Code* by ensuring that texts are available in both traditional and alternative formats.

APPENDIX B: ORGANIZATIONS THAT PROVIDED INPUT

ARCH (A Legal Resource Centre for Persons with Disabilities)
Association for Bright Children of Ontario
Association of Education and Rehabilitation Services for the Blind and Visually Impaired
Autism Society Ontario
Bloorview MacMillan Children's Centre
B'nai Brith Canada
Brampton Caledon Community Living
Cameron Bay Children's Centre
Canadian Council of the Blind (Ontario Division)
Canadian Council on Rehabilitation and Work
Canadian Foundation for Children, Youth and the Law
Canadian Hearing Society (North Bay)
Canadian Hearing Society (Toronto)
Canadian Hearing Society (Windsor)
CNIB (Canadian National Institute for the Blind)
CUPE (Canadian Union of Public Employees)(Ontario Division)
Centre for Independent Living in Toronto
City of Toronto, Community Advisory Committee on Disability Issues
College Committee on Disability Issues
Community Living, Algoma
Community Living London
Community Living Ontario
Community Living Toronto
Community Living Upper Ottawa Valley
Conseil des écoles catholiques de langue française du Centre-Est
Cornwall Parent Support Group
Counselling and Development Centre, Psychiatric Dis/Abilities Program, York University
Down Syndrome Association of Ontario
Dufferin Peel Educational Resource Workers' Association
ETFO (Elementary Teachers' Federation of Ontario)
F.E.A.T. (Families for Early Autism Treatment of Ontario)
Garden River First Nation
Haazinu Canada
Hutton House
Huron-Superior Catholic District School Board, Special Education Advisory Committee
Inter-University Disability Issues Association
Kawartha Pine Ridge District School Board
KIDS' Coalition
Laurentian University
Learning Disabilities Association of Ontario
Learning Opportunities Task Force
Logan's Pony Club for Children with Cerebral Palsy
The Marsha Forest Centre
Minister's Advisory Council on Special Education
Ministry of Training, Colleges and Universities

National Federation of the Blind: Advocates for Equality
Ontario Association of the Deaf
Ontario Association for Families of Children with Communication Disorders
OASW (Ontario Association of Social Workers)
Ontario Association of Speech-Language Pathologists and Audiologists
Ontario Coalition for Education Reform
Ontario Coalition for Inclusive Education
Ontario College of Teachers
ODAC (Ontarian with Disabilities Act Committee)
OECTA (Ontario English Catholic Teachers' Association)
OFL (Ontario Federation of Labour)
Ontario Parents of Gifted
Ontario Psychological Association
OPSBA (Ontario Public School Boards' Association)
OSSTF (Ontario Secondary School Teachers' Federation)
Ottawa-Carleton Catholic School Board, Special Education Advisory Committee
Parents of Autistics Support Group
Parents of Deaf-Plus Ontarians
Project "Ensemble"
Le Regroupement des Partenaires Francophones
Renfrew County Parents Group
Ryerson University
Seneca College, Centre for Equity and Human Rights
La société de l'autisme de l'Ontario, Ottawa
Spina Bifida and Hydrocephalus Association of Ontario
St. Mary's and District Association for Community Living
Toronto Family Network
Toronto Regional Section 19 Working Group
Tourette Syndrome Foundation of Canada
University of Guelph
Voice for Hearing Impaired Children
Windsor-Essex Catholic District School Board
York University, Office of the Counsel

APPENDIX C: LIST OF ACRONYMS

(with corresponding French acronym in parenthesis)

Elementary/Secondary

CCAC (CASC) – Community Care Access Centre
 EA – Educational Assistant
 ESL – English as a Second Language
 EQAO (OQRE) – Education Quality and Accountability Office
 IEP (PEI) – Individual Education Plan
 IPRC (CIPR) – Identification, Placement and Review Committee
 ISA (AAS) – Intensive Support Amount
 PAAC on SEAC – Parent Advisory Council on the SEAC
 Regulation 181/98 – Requires school boards to set up IPRC
 SEAC (CCED) – Special Education Advisory Committee
 SELC – Special Education Learning Centre
 SEPPA (AGED) – Special Education Per Pupil Amount
 SERT – Special Education Resource Teacher
 SIP (IS) – Special Incidence Portion

Post-Secondary

BSWD (BEH) – Bursary for Students with Disabilities
 CSG – (Canadian Study Grant) (Federal portion of BSWD) (Subvention canadienne pour études pour les personnes handicapées)
 CSLP (PCPE) – Canadian Student Loans Program (Federal portion of OSAP)
 EAPD (AEPH) – Employability Assistance for People with Disabilities
 GA – Graduate Assistantship
 ODSP (POSPH) – Ontario Disability Support Plan
 OSAP (RAFEO) – Ontario Students Assistance Program
 OSB – Ontario Special Bursary
 OSR (DSO) – Ontario School Record
 TA – Teacher's Assistant
 TOEFL – Test of English as a Foreign Language

General

AD/HD – Attention Deficit/Hyperactivity Disorder
 ADD – Attention Deficit Disorder
 ASL – American Sign Language
 CDA – Communicative Disorder Assistant
 CELF – Clinical Evaluation of Language Fundamentals
 MEDU – Ministry of Education
 MTCU (MFCU) – Ministry of Training, Colleges, and Universities
 ODS (PHO) – Ontarians with Disabilities Act
 PDD – Pervasive Development Disorder
 SERI – Special Education Resources on the Internet
 TACL – Test for Auditory Comprehension of Language

ENDNOTES

- ¹ Office of the Provincial Auditor of the Province of Ontario, *2001 Annual Report*, Section 3.06, “Special Education Grants to School Boards”.
- ² In this Report, “parent(s)” includes parent(s) and guardians.
- ³ *Human Rights Code*, R.S.O. 1990, c. H-19.
- ⁴ *Ibid.*, s. 11.
- ⁵ Ontario Human Rights Commission, *Policy and Guidelines on Disability and the Duty to Accommodate* (March 2001), available online at www.ohrc.on.ca.
- ⁶ Social handicapping can be described as society’s response to a real or perceived disability, and may be based as much on perceptions, myths and stereotypes, as on the existence of actual functional limitations.
- ⁷ Commission policies and guidelines are approved statements setting out the Commission’s interpretation of specific provisions of the *Code*. They are important because the public has a right to expect that the Commission will deal with cases in a way that is consistent with its published policies.
- ⁸ Information provided by the Ministry of Education indicates that the exact number of students enrolled in publicly funded elementary and secondary schools in Ontario for 2001-02 was 2,163,108 (1,448,270 in elementary, and 714,838 in secondary). This data includes public and Roman Catholic schools, but excludes hospital/provincial schools, and care and treatment facilities.
- ⁹ *Education Act*, R.S.O. 1990 c. E.2.
- ¹⁰ Information taken from *Student Focused Funding: Parents Guide 2002-03* (Ministry of Education, Spring 2002) available at <http://www.edu.gov.on.ca/eng/funding/eguide02.pdf>
- ¹¹ *Education Act*, *supra*, note 9, ss. 8(3).
- ¹² *Ibid.* s. 1.
- ¹³ *Special Education Programs and Services*, R.R.O. 1990, Reg. 306, ss. 2(2),(3).
- ¹⁴ *Identification and Placement of Exceptional Pupils*, O. Reg. 181/98.
- ¹⁵ *Ontarians with Disabilities Act, 2001*, S.O. 2001, c. 32, s. 15
- ¹⁶ Information supplied by the Ministry of Education. This data includes public, Roman Catholic, and hospital/provincial schools, but excludes care and treatment facilities.
- ¹⁷ For more information on the funding formula as it relates to special education, see the section of this Report entitled “Undue Hardship Standard.”
- ¹⁸ Most of the Report’s recommendations, if implemented, would come into effect in the 2003-04 school year as part of a three year funding plan. See *Investing in Public Education: Advancing the Goal of Continuous Improvement in Student Learning and Achievement*, Report of the Education Equality Task Force, 2002, available at <http://www.edfundingreview.on.ca>.
- ¹⁹ In addition to the publicly-funded primary and secondary school system in Ontario, there is an extensive network of private schools. These include religious-based schools, alternative education institutions such as the Montessori and Waldorf schools, girls’ or boys’ only schools, and numerous other independent schools. These schools range widely in size, mandate, finances, facilities, and governance structures. The *Education Act* defines private schools simply as institutions at which “instruction is provided at any time between the hours of 9 a.m. and 4 p.m. on any school day for five or more pupils who are of or over compulsory school age in any of the subjects of the elementary or secondary school courses of study” and that is not operated either by a school board or by the Ministry of Education (s.1). Private schools are required, under the *Education Act*, to submit to the Ministry of Education an annual notice of intention to operate (s.16). The Ministry has the power to require schools to file returns providing statistical information about their enrolment, staff and programs, and to inspect private schools and private school teachers. Other than this, however, the *Education Act* does not apply to private schools. Thus, private

- schools are not required to implement the IPRC process or to develop and implement IEPs.
- ²⁰ As a result of the Equity in Education Tax Credit, announced by the Ontario government in May 2003, private schools will now benefit from public funds as a result of a tax credit.
- ²¹ Information provided by the Ministry of Education.
- ²² *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 at paras. 73 and 78.
- ²³ *Disability Policy, supra*, note 5 at Part 4.3.2.
- ²⁴ *Ibid.*, Part 3.1.3(a).
- ²⁵ *Ontario Building Code Act*, S.O. 1992, c. 23.
- ²⁶ See, for e.g., *Quesnel v. London Educational Health Centre* (1995), 28 C.H.R.R. D/474. (Ont.Bd.Inq.)
- ²⁷ The Commission's full submission to the *Building Code* consultation is available on the Commission Website at www.ohrc.on.ca.
- ²⁸ The provision of accommodation is covered in this section because it is an issue which can directly limit a student's access to education. In the interest of clarity, it is dealt with separately from the topic of "Appropriate Accommodation" (i.e. the assessment of what type of accommodation is most suitable for a student), even though, it is acknowledged, an inappropriate form of accommodation may also limit a student's access to education.
- ²⁹ *Supra*, note 14, ss. 6(2).
- ³⁰ *Ibid.*, ss. 6(6).
- ³¹ Provincial Auditor's *2001 Annual Report, supra*, note 1 at 126.
- ³² For more information and the full report, see www.nlc-bnc.ca/accessinfo/s36-200-e.html.
- ³³ See Learning Opportunities Task Force Final Report, pg. 13. The full report is available at www.lotf.ca. The report provides a comprehensive overview of the LOTF's research and pilot projects, and includes key findings and 24 recommendations for enhancing access to education for persons with learning disabilities.
- ³⁴ In 1999, the Ministry of Education implemented the Ontario Secondary Schools Literacy Test (the "OSSLT", or "Grade 10 literacy test") to test the reading and writing skills acquired by students up to the end of Grade 9. Passing the OSSLT is a requirement for receiving an Ontario Secondary Schools Diploma. The test is administered through the Education Quality Accountability Office ("EQAO").
- ³⁵ Source: Education Quality and Accountability Office, *Ontario Secondary School Literacy Test, February 2002 – Report of Provincial Results*, September 2002, Queen's Printer for Ontario.
- ³⁶ Education Quality and Accountability Office, *Guide for Accommodations, Special Provisions, Deferrals and Exemptions, Ontario Secondary School Literacy Test*, October 2002.
- ³⁷ People for Education describes itself as "a group of parents from public and separate schools in Ontario working together in support of fully publicly-funded education." For more information see: <http://www.peopleforeducation.com>.
- ³⁸ People for Education, *Special Education and the Funding Formula: Emergency Service Only* (October 2002) at 9.
- ³⁹ Provincial Auditor's *2001 Annual Report, supra*, note 1 at 151.
- ⁴⁰ *Ibid.*, at 135.
- ⁴¹ *Ibid.*, at 136.
- ⁴² *Investing in Public Education, supra*, note 18 at 45.
- ⁴³ *Ibid.*, at 57.
- ⁴⁴ *Special Education and the Funding Formula, supra*, note 38.
- ⁴⁵ The Identification, Placement and Review Committee process is covered in the section of this report entitled "Accommodation Process."
- ⁴⁶ The Intensive Support Amount is a component of the Special Education Grants provided by the Ministry of Education to school boards. The Intensive Support Amount is discussed more fully in the section of

this report entitled “Labelling.”

⁴⁷ *Investing in Public Education, supra*, note 18 at 47.

⁴⁸ Entry into force September 2, 1990, ratified by Canada December 13, 1991.

⁴⁹ Proclaimed by the General Assembly, Resolution 3447 (XXX) of December 9, 1975.

⁵⁰ *Disability Policy, supra*, note 5 at Part 3.4.

⁵¹ The *Safe Schools Act* came into effect in September 2001. It amended the *Education Act* to add Part XIII, “Behaviour, Discipline and Safety.” The amendments create a new statutory scheme to govern the suspension and expulsion of pupils. Section 306 of the *Education Act* now provides for mandatory suspension if a pupil commits any of the following infractions: uttering a threat to inflict serious bodily harm on another person; possessing alcohol or illegal drugs; being under the influence of alcohol; swearing at a teacher or at another person in a position of authority; committing an act of vandalism that causes extensive damage to school property at the pupil’s school or to property located on the premises of the pupil’s school; and, engaging in another activity that, under a policy of the board, is one for which a suspension is mandatory. Section 309 provides for mandatory expulsion if a pupil commits any of the following infractions: possessing a weapon, including possessing a firearm; using a weapon to cause or to threaten bodily harm to another person; committing physical assault on another person that causes bodily harm requiring treatment by a medical practitioner; committing sexual assault; trafficking in weapons or in illegal drugs; committing robbery; giving alcohol to a minor; and engaging in another activity that, under a policy of the board, is one for which expulsion is mandatory.

⁵² The circumstances which may constitute “mitigating factors” are prescribed by regulation under the *Education Act*. Section 1 of Regulation 106/01 provides that the suspension of a pupil is not mandatory if the pupil does not have the ability to control his or her behaviour; the pupil does not have the ability to understand the foreseeable consequences of his or her behaviour; or, the pupil’s continuing presence in the school does not create an unacceptable risk to the safety or well-being of any person. Section 2 of Regulation 37/01 provides that the expulsion of a pupil is not mandatory if the pupil does not have the ability to control his or her behaviour; the pupil does not have the ability to understand the foreseeable consequences of his or her behaviour; or, the pupil’s continuing presence in the school does not create an unacceptable risk to the safety of any person.

⁵³ Special programs are programs that are designed to relieve hardship, to assist disadvantaged persons or groups to achieve equality, or are likely to contribute to the elimination of the infringement of rights protected under the *Code*. Section 14 of the *Code* allows special programs to be implemented that might otherwise be considered discriminatory under the *Code*. The collection of data by school boards could be considered a special program, if done in accordance with the Commission’s *Guidelines on Special Programs*. The *Guidelines* are available online at www.ohrc.on.ca.

⁵⁴ *Disability Policy, supra*, note 5 at Part 4.2.

⁵⁵ The *Code* protects individuals from discrimination and harassment on the basis of sixteen grounds (for example, disability, race, sex, sexual orientation, age, etc.).

⁵⁶ The concept of ‘intersectionality’ has been defined as “intersectional oppression [that] arises out of the combination of various oppressions which, together, produce something unique and distinct from any one form of discrimination standing alone...” M. Eaton, “Patently Confused, Complex Inequality and *Canada v. Mossop*” (1994) 1 Rev. Cons. Stud. 203 at 229.

⁵⁷ *An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims* was released in 2001 and is available online at www.ohrc.on.ca.

⁵⁸ Provincial Auditor’s 2001 Annual Report, *supra*, note 1 at 131.

⁵⁹ *Special Education and the Funding Formula, supra*, note 38 at 4.

⁶⁰ *Investing in Public Education, supra*, note 18 at 25.

⁶¹ Michael J. Prince, *Governing in an Integrated Fashion: Lessons from the Disability Domain*, Canadian

- Policy Research Networks (June 2001) at page 48.
- 62 *Equal Citizenship for Canadians with Disabilities: The Will to Act*, Federal Task Force on Disability Issues, Ottawa (October 1996) available at <http://www.hrhc-drhc.gc.ca/hrib/sdd-dds/odi/documents/taskForce/english/report/>.
- 63 Prince, *supra*, note 61 at 48.
- 64 *Ibid.*, at ii.
- 65 *Disability Policy*, *supra*, note 5 at Part 3.1.1.
- 66 *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 ["Grismer"] at para. 2.
- 67 *Ontario Human Rights Code*, *supra*, note 3 at ss. 10(3).
- 68 See *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City); Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, 2000 SCC 27 (3 May 2000), online: Supreme Court of Canada <http://www.lexum.umontreal.ca/csc-scc/en/index.html>.
- 69 *Robb v. St. Margaret's School*, (2003), CHRR Doc. 03-11, 2003 BCHRT 4 at para 270.
- 70 *Trinity Western University v. British Columbia College of Teachers*, 2001 1 SCC 31, [2001] 1 S.C.R. 772, [39 C.H.R.R. D/357] (Para 13 of on-line QL version).
- 71 Provincial Auditor's *2001 Annual Report*, *supra*, note 1 at 141.
- 72 ISA Level 1 provides funds for specialized equipment for individual students with high needs. ISA Levels 2 and 3 provide funds to boards based on the number of students with very high needs, for the provision of specialized programs and services (intensive supports in the classroom). ISA Level 4 provides funds for educational programs offered to children and youth admitted to care, treatment, or correctional facilities. The Special Incidence Portion (SIP) provides funds for staff support for students with extraordinarily high needs to ensure safety in the classroom.
- 73 See "The Fatal Flaws in Special Education: A Legal Challenge," Mark Handley-Derry, et al. for the Ontario Coalition for Educational Reform, at page 3.
- 74 *Disability Policy*, *supra*, note 5 at Part 3.1.2.
- 75 In some cases, particularly where there is no dispute about a student's needs, school boards will not require the student to be formally identified through the IPRC process. Even without an IPRC assessment, a student has a right to equal treatment in educational services without discrimination on the basis of disability.
- 76 O. Reg. 181/98, *supra*, note 14, s.15.
- 77 Regulation 181/98 requires principals to ensure that an IEP is developed for each student who has been identified as "exceptional" by an IPRC within 30 days of the student's placement in a special education program. For a student returning to a special education program, an IEP must be prepared within 30 days of the start of the school year.
- 78 Legislative requirements for IEPs are set out in Reg. 181/98 under the *Education Act*. See also the Ministry of Education's policy document *Individual Education Plans: Standards for Development, Program Planning, and Implementation, 2000*.
- 79 The Report notes that of the IEPs reviewed, only 17% were completed within the required 30 day period. See Provincial Auditor's *2001 Annual Report*, *supra*, note 1 at 129.
- 80 *Ibid.*, at 128, 132.
- 81 *Ibid.*, at 132.
- 82 *Ibid.*, at 149.
- 83 *Ibid.*, at 150.
- 84 *Disability Policy*, *supra*, note 5 at Part 3.4.
- 85 *Ibid.*, at Part 3.3.

- ⁸⁶ *Eaton v. Brant County Board of Education*, [1997] 1 S.C.R. 241.
- ⁸⁷ *Disability Policy*, *supra*, note 5 at Part 3.1.3.
- ⁸⁸ See MEDU Memorandum dated June 9, 1994 to directors of education, superintendents of special education, and principals as quoted in Ministry of Education, *Special Education: A Guide for Educators*, 2001 at D10.
- ⁸⁹ O. Reg.181/98, *supra*, note 14, s. 17.
- ⁹⁰ *Ibid.*, at ss. 18(2)(c).
- ⁹¹ Information taken from: <http://www.edu.gov.on.ca/eng/general/elemsec/speced/identifi.html>.
- ⁹² *Student Focused Funding*, *supra*, note 10 at 3, 5.
- ⁹³ *Special Education and the Funding Formula*, *supra*, note 38 at 1.
- ⁹⁴ *Disability Policy*, *supra*, note 5 at Part 3.3.
- ⁹⁵ *Ibid.*, at Part 4.2.
- ⁹⁶ *Grismer*, *supra*, note 66 at para. 41
- ⁹⁷ *Disability Policy*, *supra*, note 5 at Part 4.4.2.
- ⁹⁸ *Ibid.*, at Part 4.3.1.
- ⁹⁹ *Concerned Parents for Children with Learning Disabilities Inc. v. Saskatchewan (Minister of Education)*, [1998] S.J. No. 566 at paras. 63-64.
- ¹⁰⁰ Provincial Auditor's *2001 Annual Report*, *supra*, note 1 at 127.
- ¹⁰¹ *Ibid.*, at 135.
- ¹⁰² *Ibid.*, at 149.
- ¹⁰³ *Portals and Pathways: A Review of Post-Secondary Education in Ontario*, Report of the Investing in Students Task Force (2001), available on the internet at www.edu.gov.on.ca
- ¹⁰⁴ National Educational Association of Disabled Students, *Working Towards a Coordinated National Approach to Services, Accommodations and Policies for Post-Secondary Students with Disabilities* (July, 1999), pp. 60-61
- ¹⁰⁵ *Disability Policy*, *supra*, note 5 at Part 3.1.3.
- ¹⁰⁶ *Ontarians With Disabilities Act, 2001*, *supra*, note 15.
- ¹⁰⁷ *Ibid.*, s. 10
- ¹⁰⁸ *Supra*, note 33.
- ¹⁰⁹ See the sub-section entitled "Physical Accessibility" in the Elementary and Secondary section of this Report for a discussion of the interaction of the *Building Code* and the *Human Rights Code*.
- ¹¹⁰ Meeting with IDIA, February 7, 2003. Numerous issues have been raised with respect to the treatment of part-time students. See the discussion below, under Funding.
- ¹¹¹ The Commission has identified serious concerns regarding the impact of the lack of accessible public transit on older Ontarians, persons with disabilities, and families with young children and their ability to enjoy equal opportunities in education, employment and services, and to fully participate in the life of their communities. For more information, please see *Human Rights and Public Transit Services in Ontario*, (2002).
- ¹¹² *Disability Policy*, *supra*, note 5.
- ¹¹³ R.S.O. 1990, c. P.26, as amended.
- ¹¹⁴ Section 5(1). Private career colleges denied registration or renewal of registration can seek a hearing from the Licence Appeal Tribunal.
- ¹¹⁵ This discretion to refuse BSWD funding for accommodation costs that fall under the institution's duty to accommodate is problematic, because all eligible costs listed under the BSWD would fall under that obligation if it were not for the BSWD being available to the institution as an outside source of funding in meeting its duty to accommodate under the *Code*.
- ¹¹⁶ *Supra*, note 33.

- ¹¹⁷ Detailed statistical information on tuition fees at Ontario universities is available in the annual *Ontario Universities Resource Document*, produced by the Ontario Council of Universities, and available online at <http://www.cou.on.ca>
- ¹¹⁸ Ontario Human Rights Commission, *Policy on Scholarships and Awards*, (July 1997) at Part 2, under “Equality”, available online at www.ohrc.on.ca.
- ¹¹⁹ *Supra*, note 33. The final report of the LOTF includes a number of recommendations on this point, noting that “diagnosis is the gateway to identifying appropriate services, supports, accommodations and achieving future success for persons with disabilities.
- ¹²⁰ *Gibbs v. Battlefords and Dist. Cooperative Ltd.* (1996), 27 C.H.R.R. D/87 (S.C.C.)
- ¹²¹ *Wignall v. Canada (Department of National Revenue)* [2001] C.H.R.D. No. 9, CHRT. The Tribunal indicates that the complainant might be able to look for redress to other parties that contributed to the problem, such as the University that required him to apply for this taxable grant as a condition of obtaining disability services, or to Human Resources Development Canada, which decided to fund the accommodation needs of students with disabilities through a taxable grant.
- ¹²² *Simser v. R.* (22 May 2003) 2003TCC366 (Tax Court of Canada).
- ¹²³ *Supra*, note 22.
- ¹²⁴ *Howard v. University of British Columbia (No. 1)*, (1993), 18 C.H.R.R. D/353 (B.C.C.H.R.)
- ¹²⁵ Information provided to the Commission by the Ministry of Training, Colleges and Universities.
- ¹²⁶ Section 34(1)(d) of the *Code* gives the Commission discretion not to deal with a complaint of discrimination where “the facts upon which the complaint is based occurred more than six months before the complaint was filed, unless the Commission is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.” Commission procedures require that persons who contact the Commission with respect to a potential complaint be informed of this provision of the *Code*.
- ¹²⁷ The *Disability Policy* states that: “In order to claim the undue hardship defence, the person who is responsible for the accommodation has the onus of proof. It is not up to the person with a disability to prove that the accommodation can be accomplished without undue hardship.”
- ¹²⁸ *Disability Policy*, *supra*, note 5 at footnote 56.
- ¹²⁹ *Supra*, note 32. The Task Force developed a list of 26 recommendations for improving access to information. In response, the National Librarian has established a Council on Access to Information for Print-Disabled Canadians, which provides advice, identifies funding requirements, monitors progress, and makes recommendations regarding the implementation of the Task Force recommendations.
- ¹³⁰ *Disability Policy*, *supra*, note 5 at Part 3.3.
- ¹³¹ This issue will be dealt with further in the Guidelines on Accessible Education. Please see also *Concerned Parents for Children with Learning Disabilities Inc. v. Saskatchewan (Minister of Education)*, *supra*, note 99 at 141.
- ¹³² *Eldridge v. British Columbia (Attorney General)*, *supra*, note 22.
- ¹³³ Provincial Auditor's 2001 Annual Report, *supra*, note 1 at 150.
- ¹³⁴ R.R.O. 1990, Reg. 306, *supra*, note 13, s. 2(2), (3), (4).
- ¹³⁵ The Ministry of Education, Standards for School Boards' Special Education Plans, 2000 at page 3, available at <http://www.edu.gov.on.ca/eng/general/elemsec/speced/iepstand/iepstand.html>.
- ¹³⁶ *Ibid.*
- ¹³⁷ *Disability Policy*, *supra*, note 5 at Part 3.4.
- ¹³⁸ *Howard v. University of British Columbia*, *supra*, note 124.