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July 14, 2020

The Honourable Stephen Lecce
Minister of Education
438 University Ave, 5th Floor
Toronto, Ontario M7A 1N3

Chairs of District School Boards

Directors of Education

School Authorities

RE: COVID-19 – Respecting the rights of students with disabilities

I am writing on behalf of the Ontario Human Rights Commission (OHRC).

We hope this letter finds you and your team safe and healthy, and we thank you for your ongoing efforts to provide continuity of learning for students during the COVID-19 pandemic.

The OHRC welcomes the June 19 announcement of the government's *School Safety Plan* for the 2020 – 2021 school year, and understands that school boards will develop specific plans by late July based on this direction. In addition to this plan, we know that the Ministry of Education (MOE) has provided guidance to school boards on continuity of learning for students with special education needs.

The unprecedented closure of schools has been difficult for all students. The OHRC has heard from stakeholders that students with special education needs and other vulnerabilities have experienced unique and compounded challenges, that their circumstances have not consistently been considered and addressed, and that as a result, they have fallen even further behind than their peers. It is imperative that the MOE and school boards establish plans and programs to systematically and consistently address the needs of students with disabilities for the 2020 – 2021 school year. Some specific concerns have been raised in the context of the OHRC's current Right to Read public inquiry into human rights issues affecting students with reading disabilities. We have also heard from members of the OHRC's Education Advisory Group, as well as from disability rights organizations.

The OHRC released a [policy statement](#) on maintaining human rights during the COVID-19 pandemic, as well as a [statement of actions](#) that sets out various steps that governments, and those delivering government services, can take that are broadly consistent with a human rights-based approach to managing the COVID-19 pandemic. This letter provides additional and specific guidance from the OHRC on obligations under the Ontario *Human Rights Code* (the *Code*) related to the needs of students with disabilities.

Under the *Code*, students with disabilities have a right to meaningful access to the education that all other students receive. Education providers have a legal duty to accommodate the needs of students with disabilities who are adversely affected by a requirement, rule or standard. Accommodation is necessary to address barriers in education that would otherwise prevent students with disabilities from having equal opportunities, access and benefits.

Drawing from the OHRC's principles and actions documents along with stakeholder feedback, this letter provides additional and specific guidance on obligations under the *Code* for students with disabilities experiencing barriers to at home learning and potential barriers resulting from modified classrooms in the 2020 – 2021 school year.

The OHRC is concerned about:

1. Technology
2. Personal contact
3. Professional services
4. Screening and assessment
5. Instruction
6. Specialized programming
7. IPRCs and IEPs and the duty to accommodate
8. Summer learning programs
9. Shared legal responsibility.

We recognize that you are already aware of many of these issues and that the situation is continually evolving. We acknowledge that the MOE, boards and other partners respond to issues as they arise. However, we are concerned that to date, there has been a lack of a systematic and consistent approach that takes into account the unique needs and vulnerabilities of students with disabilities and other *Code*-protected groups. It is imperative that the MOE and boards systematically and consistently address their needs when preparing plans and programs for vulnerable students for the 2020-2021 school year.

1. Technology

The OHRC strongly supports the Ministry's guidance in the *School Safety Plan* to boards to extend arrangements that provided devices and internet connectivity to students who would otherwise not be able to access remote learning, as well as ensuring platforms are accessible for persons with disabilities.

During school closures, access to and effective use of technology has been a challenge for both educators and students. Students' ability to use technology to learn is impacted by Internet access, availability of a device, their own capacity to use technology, and their family's ability to support its use. Having a disability or other vulnerability, such as living in poverty, exacerbates these challenges, as does the availability of reliable Internet access. Educators' capacity to translate their teaching to online environments also varies. As plans for a return to in-classroom learning or a hybrid of in-classroom and at-home learning in September remain unclear, access to effective technology will be crucial for any potential scenario in September.

The duty to accommodate in these circumstances includes providing support in using technology to staff, students and families both through workshops and one-on-one support where necessary. Schools should clearly communicate with students and families what assistance is available, and provide a single point of contact should there be any difficulties.

Any technology that is used to deliver education services must be fully accessible to students with disabilities. We understand that several different digital platforms are being used and that they may not all be fully accessible. Using platforms that are not fully accessible for students with disabilities could result in a finding of discrimination under the *Code*.

We understand that students have been permitted to bring any Special Equipment Amount (SEA) technology home, and we recommend that this option continue. SEA claims should continue to be processed in a timely fashion. Lack of access to full professional assessments should not be a barrier to obtaining a recommendation for SEA technology. It may be appropriate for the MOE to waive this requirement for the 2020 – 2021 school year and/or for boards to explore ways to ensure the professional recommendations for SEA technology can still be obtained. For example, MOE or boards could facilitate professional consultations related to access to technology for SEA claims.

2. Personal contact

The OHRC has heard that students have experienced little to no personal contact with classroom teachers, special education teachers, educational assistants, speech language pathologists, social workers and other professionals. This has a particularly negative impact on students with disabilities

who rely on this regular contact to support their learning, maintain their engagement with school and preserve their mental health.

Students with disabilities such as learning disabilities are more likely to experience co-morbid conditions such as depression and anxiety. The World Health Organization (WHO) has recognized that a sense of connectedness, good communication, and perceptions of adult caring have been shown to be related to a wide range of mental health outcomes for students. As well, the relationship between teachers and students has been shown to be associated with student progress and academic achievement.¹

The OHRC is encouraged by and supports the direction in the *School Safety Plan* relating to students with a high level of special education needs, who may find remote learning challenging. Boards will need to consider providing the option of attending school every day, and where schools have smaller classes, such as congregated classrooms for students' special education needs, boards are also encouraged to offer everyday timetabling.

However, to the extent that online learning continues in the 2020-2021 school year and in recognition that many parents with students with special education needs, or physical vulnerabilities to COVID-19, may choose to continue learning at home, it is imperative that students have regular personal contact with their teachers, special education teachers, educational assistants and others. As remote learning continues, there should be regular scheduled check-ins with students and parents/guardians using video conferencing or teleconferencing where technology does not support videoconferencing.

3. Professional services

We understand that many professional services have been suspended as a result of COVID-19. For example, we heard that boards have not been conducting psycho-educational assessments. We also understand that access to other professional staff has been limited or inconsistent. The OHRC is concerned that the *School Safety Plan* does not provide specific guidance to boards in this area.

This raises significant concerns from a human rights perspective. In normal times, there can be significant wait times to access these services. Additional delays mean that some students will not be getting assessed or served in a timely way. We echo the direction provided by the MOE on May 27, 2020 that boards “**must** continue to ensure that mental health workers, para-professionals, and other professional staff remain available to students to support them during

¹ The World Health Organization's Information Series on School Health Document 10, Creating an Environment for Emotional and Social Well-Being, online: www.who.int/school_youth_health/media/en/sch_childfriendly_03.pdf.

this difficult time. Recognizing the importance of privacy and sensitivity of many of these discussions, boards must provide safe and secure options for students to directly engage with these professionals on an as-needed basis. As students face increasing mental health challenges during this pandemic, it is vitally important that mental health professionals continue fulfilling their critical role.”

For the 2020-2021 school year, it is imperative that boards have a plan to not just ensure access to staff on an as needed basis, but to continue to ensure that these staff provide the key services they typically provide including psycho-educational and speech language assessments, mental health supports, etc.

4. Screening and assessment

Early and ongoing screening and assessment for learning difficulties are required by PPM-8. The OHRC has identified early screening as a key requirement to meet the needs of reading disabilities in its Right to Read inquiry.

It is imperative that boards continue to ensure that educators conduct early screening and assessment of students (e.g. phonological awareness screening and reading level assessments), to identify students at risk for difficulties and be able to respond appropriately (for example, with differentiated instruction, additional support, discussion with special education teams, developing IEPs, referral for professional assessments etc.). It is particularly important that students who need access to reading intervention programs and other specialized programs be identified and offered these programs during the 2020-2021 school year (for more on this, see below).

While the *School Safety Plan for 2020 – 2021* suggests that assessment, evaluation and reporting activities should proceed as usual, the *Plan* is lacking on specific detail about screening and assessment for learning difficulties.

5. Instruction

We welcome the MOE’s direction to boards to prioritize synchronous learning for the 2020 – 2021 school year. At the same time, we wish to convey that we have heard concerns from families that synchronous learning is challenging when households do not have enough devices. In this regard, the OHRC strongly urges boards to extend arrangements that provide devices and Internet connectivity to students who would otherwise not be able to access remote learning.

We also heard that differentiated instruction that reflects the needs and learning profiles of all students is not taking place, and that extra support may not be available. This raises concerns for several reasons. Students with learning difficulties need direct instruction from their teachers. Many parents are not equipped or in a position to “teach” their children the curriculum or support them in accessing the materials provided. The OHRC notes that some disability rights

organizations have identified innovative teaching practices for students with disabilities and we encourage you to take a look at them.

A one-size-fits-all approach to teaching does not work for many students with disabilities and is not consistent with Universal Design for Learning.

Plans for the 2020 – 2021 school year must consider needs of students with learning disabilities and students who face barriers to at-home learning, and use scientific evidence-based approaches to help close the learning gap (for example, by providing access to synchronous phonics instruction).

6. Specialized programming

Many students with disabilities rely on specialized programming, classes or supports. One example is reading intervention programs such as Empower Reading. The OHRC has heard that since the school closure in March, these programs have not continued or have continued only on a very limited basis.

While we appreciate that the sudden disruption to the school year presented several challenges, in anticipation of the 2020 – 2021 school year it will be imperative that boards find ways to continue to run these programs for students with disabilities. If children lose the opportunity to take part in these programs, the impact can be significant and life-long.

The OHRC therefore supports the *School Safety Plan* in urging boards to resume the delivery of special programming and to offer regular timetabling for programs like Empower Reading.

7. IPRCs, IEPs and the duty to accommodate

Boards must continue to accommodate students with special education needs (whether or not they have been identified through an IPRC) to the point of undue hardship. The accommodations that students were receiving before the pandemic must continue or be adjusted to reflect the current circumstances. Boards must be attentive to whether new accommodations are necessary and take immediate steps to put these in place.

The process for reaching an accommodation solution is as important as the substance of the accommodation, and should include:

- Meaningful dialogue among all parties that share the responsibility to provide accommodation, with expert assistance as required
- Contingency planning, in consultation with affected families
- Individual assessment of the needs of students, which may include extra one-on-one time with students virtually
- Examining and evaluating less discriminatory alternatives.

The ongoing implementation of Individual Education Plans (IEPs) and work of the Identification, Placement and Review Committees (IRPCs) will be fundamental to ensuring students who require special education supports and accommodations are able to thrive in the 2020 – 2021 school year.

The OHRC heard from stakeholders that due to school closures, some parents were asked to waive IEP consultations, or where IEP meetings did happen they were very brief and parents were not given the time to ask questions or raise concerns.

Some stakeholders also informed the OHRC that IEPs were not being implemented at all. IEPs ensure vital supports and accommodations for students with special education needs, and it is unacceptable that they not be implemented. Parents/guardians must be given the opportunity to have proper IEP consultations, and boards must heed the MOE's direction to consider changes in the school environment and/or remote learning needs when reviewing and updating IEPs. Normal waiver scenarios (i.e. where no changes to an IEP are needed) are acceptable.

Similarly, the OHRC strongly recommends that IRPC meetings continue through the 2020 – 2021 school year. The *School Safety Plan* does not provide specific guidance on this.

Given the heightened vulnerabilities of students who require special education support, it will also be important to regularly engage board Special Education Advisory Committees (SEACs) to discuss plans and obtain feedback.

8. Summer learning programs

The OHRC supports plans for summer learning programs targeted to vulnerable students, including focused programming for students with special education needs and programming through the Provincial Demonstration schools. However, to be effective, the MOE and boards must ensure that these programs are scientific and evidence-based. For example, any programs to support reading and literacy should be based on the science of reading (e.g., they should emphasize instruction in phonological awareness and phonics in addition to including other foundational skills such as vocabulary, fluency and comprehension).

9. Shared legal responsibility

The responsibility for ensuring equal treatment in educational services for students with disabilities and other *Code*-protected groups rests with government, unions and school boards, among others. There is a shared responsibility to ensure that COVID-19 does not result in a denial of equal treatment to students with disabilities or other students who have faced barriers

when accessing education. All persons involved in delivering education services must work to remove barriers that impede access for vulnerable students.

The OHRC appreciates the ever-evolving circumstances surrounding COVID-19, and we know that you are continually working to address the impact of school closures on students. Vulnerable students' rights must be at the forefront of your planning, and their needs must be supported and accommodated to the point of undue hardship.

Sincerely,



Raj Dhir
Executive Director

cc: Président, Association des conseils scolaires des écoles publiques de l'ontario (ACÉPO)
Présidente, Association franco-ontarienne des conseils scolaires catholiques (AFOCSC)
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