

LDAO Response to Consultation on Guidelines on Accessible Education

June 2017

The Learning Disabilities Association of Ontario (LDAO) and its community-based chapters represent the interests of persons with learning disabilities (LDs) throughout Ontario. In the publically funded school system, students with LDs make up about 40% of students receiving special education supports and services, and many students with LDs go on to postsecondary studies at colleges or universities. LDAO has responded to consultations on all human rights areas that affect individuals with LDs, and we are happy to provide input into possible updates to the 2004 ***Guidelines on Accessible Education***.

To begin with, the Guidelines document outlines many important principles that will be important to maintain, such as individualized approach to accommodation, based on assessment of individual needs, and timely accommodation. An attached document outlines sections of the present guidelines that are particularly important to the students that LDAO serves.

The LDAO Legislation and Policy Committee considered the questions posed in your letter, and the following summarizes the points discussed:

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

Currently the document says:

“The focus is on the *effects* of the preference, exclusion or other type of differential treatment experienced by the person and not on proof of physical limitations or the presence of an ailment.”

LDAO COMMENTS:

The definitions of disability in the Ontario Human Rights Code do not align with the definitions under Exceptionalities used for special education at elementary and secondary levels of the public school system. Accommodating students with disabilities under the Code is different from providing special education supports and services to students who are identified Exceptional under the Education Act. This causes some confusion. In addition, students who are identified under the Gifted category for special education would not qualify as having a disability under the Ontario Human Rights Code, unless there were co-existing conditions.

In the elementary and secondary public school system, the Ministry of Education speaks of ‘students with special education needs’ rather than ‘students with disabilities’, and does not usually require a diagnosis.

In the postsecondary sector, access to accommodations depends on documentation of functional limitations that result from a disability, rather than the disability itself. Having a disability diagnosis does not necessarily qualify a student for accommodations.

Consideration should be given to revision of the definitions in the Ontario Human Rights Code, as some of the terms are archaic. The definition of learning disability would not necessarily need to change, but the term 'mental disability' would be better stated as 'mental health disability' in line with current usage, and to distinguish from 'intellectual disabilities' as well as 'learning disabilities'. Prior to Code changes, the term 'mental health disabilities' could be used in the Guidelines.

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

Currently the document says:

"While a student seeking accommodation must provide information about his or her disability-related needs, and in some cases may have to provide medical confirmation that a disability exists, it is not generally necessary, particularly at the secondary and post-secondary levels, for the student to explicitly inform the education provider of the specific type of disability, or to provide specific medical information (e.g., a diagnosis) about a disability. A diagnosis of a student's medical condition will not usually be relevant to or necessary for planning accommodation, and wherever possible, an education provider should attempt to ascertain the disability-related needs of a student without requiring a formal diagnosis.

There will be some cases, however, where there may be overlap between a description of the student's needs and an actual diagnosis. In these circumstances, it may be necessary for an education provider to require a diagnosis to appropriately accommodate a student."

LDAO COMMENTS:

In the elementary and secondary sector, the focus is on effects of a condition on academic areas, rather than on the diagnosis. Students may get special education supports and services informally, and an Individual Education Plan, without a diagnosis, or even without identification under a special education Category and Definition. This can make it easier to access accommodations (in the Code sense) but is also dependent on the decision-making of school personnel.

Postsecondary offices for students with disabilities currently require diagnosis of learning disabilities in order for students with LDs to access accommodations. Rationale for this has included the need to justify accommodations to faculty/instructors. However, diagnosis by itself is not enough – details about the effects of the diagnosis on the individual's academic functioning (i.e. functional limitations) are required. Many medical professionals and some psychology professionals are not familiar with the concept of functional limitations in an academic setting, and may not understand how the diagnosis affects academic functioning. The postsecondary sector has concerns about the inadequacy of many professional assessment reports submitted in support of accommodation requests.

There is significant overlap between learning disabilities and both ADHD and mental health issues. In such complex situations, it may be important to have diagnoses in order to develop appropriate accommodation plans.

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

Currently the document says:

“It is important to keep in mind that some mental illnesses may render the student incapable of identifying his or her needs. An education provider has a responsibility to take an active role in addressing situations that may be linked to mental disability. Where an education provider has reason to believe that a student may require assistance or accommodation due to a mental disability, further inquiries should be made and support offered.”

LDAO COMMENTS:

As mentioned in comments on Question One, the term ‘mental disability’ should be changed to ‘mental health disability’ to distinguish from intellectual disabilities.

The duty to inquire about a student’s disability-related accommodation needs would come up more often for students who have mental health disabilities. However, stigma is an issue for individuals with learning disabilities as well as mental health disabilities, so disclosure can be something students avoid at the postsecondary level. If a student were struggling academically, it would be appropriate for educators to inquire if the student has been assessed for learning disabilities.

In elementary and secondary settings, students who struggle academically are usually referred to the school-based team, to develop remedial strategies for the classroom teacher to try. There is an issue that parents are usually not invited to the school team meetings. When a student does not progress in spite of the classroom strategies, the parent should be contacted to get permission for referral for professional assessment.

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

LDAO COMMENTS:

Additional factors that may intersect with disability include culture, race, sexual orientation and gender identity. Students with disabilities who identify under one or more of these categories often face additional challenges at school. Their educational opportunities may be limited and they often experience bullying and harassment. Educators may focus on the most noticeable attributes of a student, and not accommodate for other issues. For example, students who are racially marginalized or aboriginal may not be referred for special education assessment if they are struggling academically, and educators may not look for underlying neurobiological reasons for any behavioural difficulties.

It should be noted that within the Code ground of disability, other disorders such as ADHD and mental health disabilities frequently co-occur with learning disabilities. In such cases, complex plans for accommodation will be needed.

5. When, if ever, the right to accommodation must be balanced with the rights of other people (e.g. other students, or employees in the educational community).

LDAO COMMENTS:

Some educators have the mistaken belief that accommodations give students with learning disabilities an unfair advantage and therefore disadvantage other students, whereas accommodations should be understood as 'levelling the playing field'.

6. Other issues:

Education as a service

The Jeffrey Moore Supreme Court decision asserted that Special Education is not to be viewed as a service in the Human Rights context, but rather as a means of accessing Education, which is the service: "for students with learning disabilities like Jeffrey's, Special Education is not the service, it is the means by which those students get meaningful access to the general education."

Education at the elementary and secondary levels is a right that is available to all children. Students with learning disabilities need access to intensive evidence-based remedial instruction in order to have meaningful access to education

At the postsecondary level, education is not a legislated right. Postsecondary students with disabilities should have access to academic accommodations that allow them to have the same access to postsecondary education as their peers (i.e. students in postsecondary programs). They should be compared to other postsecondary students, not to the 'average person' in determining eligibility for accommodations. The 'average person' comparison, which is used in the Americans with Disabilities Act, has sometimes been used in the postsecondary sector to deny accommodations to students with learning disabilities.

Access to assessment

Learning disabilities are the only disability where assessment and diagnosis are not covered by OHIP. This creates an unfair disadvantage to students who may have learning disabilities.

In elementary and secondary education, school boards have long waiting lists for assessment (often over a year) which delay access to appropriate accommodation. Parents who can afford private assessment can often move ahead, if the school board accepts their assessment report, thus creating a two-tiered system.

In postsecondary education, most students with learning disabilities need to get an updated assessment in order to access accommodations. Those who are financially eligible for an OSAP loan may be able to access the Bursary for Students with Disabilities to pay for assessment, but even this requires 'going through hoops'. Students who are not financially eligible for OSAP but do not have parents who can afford the high cost of assessment are disadvantaged in accessing accommodations.

Thank you again for the opportunity to participate in this review of the **Guidelines on Accessible Education**, and please contact LDAO if you have questions or wish to have a further discussion.