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July 13, 2017

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RE : The Proposed Education Standard for the *Accessibility for Ontarians with Disabilities Act, 2005 (AODA)*

Dear Premier and Ministers,

We write to you with respect to the ongoing consultations for the proposed Education Standard under the AODA. At the outset we would like to express our thanks for embarking

on the commendable initiative of developing such a standard. This effort has the potential to significantly improve the accessibility of the education system for students with disabilities.

We understand that as an initial step towards this goal, the Ontario Government has released to the public an initial consultation survey designed to help establish the scope and mandate of the Standards Development Committee. We are writing to you in response to the questions on the survey with the intention of providing feedback to the Government regarding the scope and mandate of the Standards Development Committee and regarding some of the shortfalls in the survey itself.

The Scope of the Survey is Too Narrow

ARCH notes that the initial consultation survey largely focuses on five separate areas:

- Accessibility Awareness and Training
- Awareness of Accessibility Accommodations – Policies, Processes, and Programs/Supports
- Information, Communication, and Inclusive Decision-Making
- Transition Planning
- Inclusive and Accessible Learning Spaces

Although one final open ended question on the survey asks about additional issues outside of these areas, ARCH is concerned that the five ‘themes’ identified by the Government are steering the conversation away from a number of significant accessibility issues. For instance, ARCH has represented a number of clients who have been explicitly excluded from primary or secondary school for an extended period of time for disability related behaviours. In these circumstances, existing school programs frequently fall short in providing appropriate accommodations to these students. This issue is not clearly addressed in the consultation questions and should not be excluded from consideration by the Standards Development Committee.

Another example which does not clearly fall into the above categories is related to decision making. Although the survey addresses the need to ensure parental “participation” in decisions which affect the “accessibility” of their schools, colleges, or universities, this does not address situations in which a dispute arises regarding potential accommodations. ARCH has both received calls from and represented many parents in such disputes and has often found a significant lack of effective and impartial methods for resolving them. This issue also appears to be neglected by the survey.

ARCH also notes that the survey largely limits itself to publicly funded schools, colleges and universities in Ontario. This omits a number of education service providers in Ontario including private schools, early learning programs and job training/apprenticeship programs which are not administered by a public entity. It is important to recognize that persons with disabilities receive educational services from a variety of sources, both public and private, and that any standard which does not address all service providers’ risks leaving significant accessibility barriers unaddressed.

Overall, ARCH is concerned that the survey questions as they presently are set out may unduly limit responses and subsequently limit the scope and mandate of the Standards

Development Committee. ARCH strongly suggests that the Committee should be empowered to look at any accessibility issue which it identifies in its work, whether or not this issue was raised in the initial consultation survey.

Considerations for the Scope and Mandate of the Standards Development Committee

The following items represent principles which should be taken into account when the Government is drafting the scope and mandate of the Standards Development Committee. Ensuring that these principles are included in the final mandate of the Committee will help ensure that the proposed education standard effectively increases the inclusivity and accessibility of our education system.

The Human Rights Code

The landmark decision in *Moore v. British Columbia* 2012 SCC 61¹ articulated the legal standard that educational service providers must meet in order to fulfill their human rights obligations with respect to educating students with disabilities. The Court stated that students must be provided with “meaningful access” to education generally and not just “special education” services. That is, school boards must ensure that they provide effective individualized supports to students with disabilities to ensure that they can fully access the general benefits of the education system.

This guidance sets a high standard for accessible education and ARCH believes that the Standards Development Committee mandate must ensure that the Committee drafts an education standard which reflects the stringent requirements set by the *Human Rights Code* R.S.O. 1990, c. H.19 and the developing case law on human rights in the educational context.

Article 24 of the *Convention on the Rights of Persons with Disabilities (CRPD)*

One of the major developments in education law since the introduction of the AODA was the ratification of the CRPD, which bound Ontario to a number of disability related obligations. This included Article 24, which recognizes the right of persons with disabilities to access inclusive education and obligates state parties to provide appropriate supports and services. Part 1 of the Article states that:

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:
 - a. The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

¹ Subsequently adopted by the Human Rights Tribunal of Ontario in *R.B. v. Keewatin-Patricia District School Board*, 2013 HRTO 1436.

- b. The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- c. Enabling persons with disabilities to participate effectively in a free society.

ARCH views any new education standard developed under the AODA as a significant step towards realizing the Government of Ontario's obligations under the CRPD and thus would recommend that the Government require that the Standards Development Committee explicitly consider the obligations imposed by Article 24.

Universal Design for Learning

One of the principles which animate Article 24 of the CRPD is Universal Design for Learning, an approach to accessibility that mandates that learning environments, teaching strategies and course materials should be designed to be accessible to the maximum number of people from the outset, so that accommodation or other post-hoc adjustments to the learning environment are minimized.

ARCH believes that this approach should underlie the Committee's work on an education standard. By doing so, the Committee can ensure that the education standard reflects the best practices in accessible education and will ensure that accessibility is built directly into our education system, foregoing some of the need to adopt special and/or costly measures to improve accessibility after the fact.

Additional Issues For Consideration

While the above principles should guide the Committee's scope and mandate, the following represent several selected issues that the Committee should specifically consider during the development of an education standard:

- 1) *The Need to Ensure Appropriate Accommodations are Available* – The parents that ARCH has worked with have often identified gaps in the accommodations available for students in the education system. These have often led to significant barriers with respect to accessing education. The Committee should take these gaps into account when they are producing a recommended education standard and make appropriate recommendations to address them.
- 2) *The Identification, Placement and Review Process* – This resource intensive and archaic process has been used to identify students with disabilities and to place them since the 1980s. While it has some utility for parents when they are advocating for their children, the process has limited utility with respect to resolving accommodation disputes. The Committee should take this process, and the ineffective role it plays in accommodating students, into account when they are producing a recommended education standard.
- 3) *Exclusion of Students with Disabilities* – At present students with disabilities are often excluded from the school system via the suspension or expulsion process, via s. 265(1)(m) of the *Education Act*, or because they are simply asked to keep their children at home. The Standards Development Committee should consider these

scenarios when they are developing a proposed education standard and ensure that the standard addresses situations.

- 4) *Barriers Resulting From Collective Agreements* – In many circumstances, collective agreements and other labour issues can present challenges for school boards when attempting to implement proper accommodations in the school setting. These issues include the role that labour actions can play in preventing proper accommodation or issues related to ensuring proper staffing support is provided to students. The Standards Development Committee should consider the role that collective agreements and labour actions play in generating barriers to students with disabilities and to formulate standards addressing these situations.
- 5) *Segregated Classrooms* - Parents have called ARCH numerous times to complain that their child is being pressured by a school board into a segregated setting. In many cases, the rationale is that the segregated setting has greater resources or is better equipped to accommodate some aspects of the student's disability. This situation reflects the systemic barriers students with disabilities face when attempting to gain access to an inclusive mainstream classrooms. At many school boards the education system is structured to provide accommodations only in a segregated setting. The Standards Development Committee should address these concerns in their recommended education standard.
- 6) *Physical Accessibility* – ARCH notes that the survey includes questions related to the physical accessibility of older buildings and strongly endorses that this issue be considered by the Committee. However, it should be emphasized that accessibility issues are not limited to older buildings and the new accessibility guidelines adopted in the latest iteration of the Ontario Building Code still present accessibility issues for many people. ARCH suggests that the mandate of the Standards Development Committee should include reference to making recommendations to remedy physical accessibility issues in all learning environments.

Diversity of Community Members

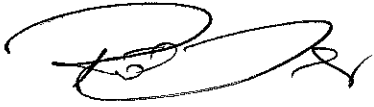
Finally, ARCH hopes that the Committee members ultimately chosen for the Standards Development Committee are representative of the broad swath of individuals who utilize our education system. In particular, ARCH hopes that there is sufficient representation from the disability community as well as other racialized, indigenous and equity seeking communities across the province.

Conclusion

ARCH believes that the Government of Ontario has a significant opportunity to radically improve the accessibility of the Ontario school system provided that the Standards Development Committee is given a broad mandate to address all of the accessibility issues that students face in the education system. A mandate which takes into account the human rights of persons with disabilities, Ontario's international obligations under the CRPD, and the best practices for accessible learning is crucial to achieving a robust standard which promotes the full inclusion of students with disabilities.

ARCH welcomes the opportunity to provide more detailed submissions to the Standards Development Committee once it has been formed. However, should there be any questions in the interim, please do not hesitate to contact us.

Yours Truly,
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