



**ARCH Disability Law Centre  
Submission to  
Ontario Ministry of Education  
Regarding Access to Education for  
Students with Disabilities during the  
COVID-19 Crisis**

**To: Hon. Stephen Lecce, Minister of Education  
Sent via email: [EDU.consultation@Ontario.ca](mailto:EDU.consultation@Ontario.ca)**


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## I) Introduction

In March 2020, Ontario schools closed indefinitely as part of a response to the COVID-19 pandemic with an aim to limiting its spread. This closure ultimately led to the decision for school boards to rely on online learning platforms and electronic formats for the remainder of the 2019-2020 school year.<sup>1</sup> On June 19, 2020, the Ontario Government released its plan for reopening schools for the 2020-2021 school year.<sup>2</sup> The Government has asked schools to prepare for: normal school day routines with modified public health protocols; modified school day routines; and at-home learning with enhanced remote delivery.<sup>3</sup> The Government has urged schools to remain flexible and adapt to changing health standards and protocols.<sup>4</sup>

On June 18, 2020, the Accessibility for Ontarians with Disabilities Act Alliance (“AODA Alliance”) submitted a brief to the Ontario Government outlining 19 key recommendations the government should implement to address the needs of students with disabilities during the COVID-19 crisis.<sup>5</sup> Twelve other disability organizations, as well as the Ontario Secondary School Teachers Federation (“OSSTF”), have since endorsed these recommendations.<sup>6</sup>

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<sup>1</sup> “COVID-19: Support for students and parents” April 2020, online: <<https://www.ontario.ca/page/covid-19-support-students-and-parents#closures>> [Support for students and parents].

<sup>2</sup> “Approach to reopening schools for the 2020-2021 school year” June 2020, online: <<https://www.ontario.ca/page/approach-reopening-schools-2020-2021-school-year>> [Approach to reopening].

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> AODA Alliance, “June 18, 2020 finalized brief to Ontario Government” June 2020, online: <<https://www.aodaalliance.org/whats-new/download-in-ms-word-format-the-aoda-alliances-june-18-2020-finalized-brief-to-the-ontario-government-on-what-needs-to-be-done-to-meet-the-needs-of-students-with-disabilities-during-the-trans/>> [AODA Alliance Brief].

<sup>6</sup> AODA Alliance, “The Ontario Secondary School Teachers Federation and Ten Disability Organizations Have Already Endorsed the AODA Alliance 19 Recommendations” June 2020, online: <<https://www.aodaalliance.org/whats-new/the-ontario-secondary-school-teachers-federation-osstf-and-ten-disability-organizations-have-already-endorsed-the-aoda-alliances-19-recommendations-on-what-the-ontario-government-must-now-do/>>

## II) About ARCH

ARCH Disability Law Centre (“ARCH”) is an Ontario-based specialty legal clinic with a mandate of defending and advancing the equality rights of persons with disabilities.

ARCH is primarily funded by Legal Aid Ontario, and governed by a board of volunteer directors, a majority of whom are people with disabilities. ARCH provides legal services through direct summary legal advice and referral services, direct legal representation of persons with disabilities and disability organizations through test case litigation at federal and provincial tribunals and courts, the delivery of public legal education to disability communities, and conducts law reform and policy initiatives.

Along with representing clients with disabilities in various education matters, ARCH conducts research and law reform initiatives regarding accessible education, which can be viewed here: <https://archdisabilitylaw.ca/initiatives/education-initiative/>

In 2018 ARCH, in partnership, conducted an extensive research project on barriers to accessible and inclusive education, titled “If Inclusion Means Everyone, Why Not Me?”. This report identifies key barriers students with disabilities face when accessing education and stresses the importance of consistent leadership throughout education boards and the provincial government.<sup>7</sup> Accessible and inclusive education continues to be a key area of interest for ARCH, and the research and direct legal services that ARCH conducts informs these submissions.

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<sup>7</sup> “If Inclusion Means Everyone, Why Not Me?” 2018, online: <<https://archdisabilitylaw.ca/wp-content/uploads/2018/05/If-Inclusion-Means-Everyone-Why-Not-Me.pdf>> at pg 26 [If Inclusion Means Everyone].

### **III) ARCH Endorses the AODA Alliance’s Recommendations**

ARCH endorses all recommendations put forward by the AODA Alliance in its June 18, 2020 brief to the Ontario Government. The following submissions expand upon some key themes addressed in the AODA Alliance recommendations. ARCH emphasizes the importance of viewing these submissions through an intersectional and disability rights lens, namely recognizing the impact that these accessibility barriers have on racialized and low-income students with disabilities and their families.

In these submissions, ARCH elaborates on three key themes put forward by the AODA Alliance. Specifically: 1 - the importance of online learning being accessible; 2 - preventing the exclusion of students with disabilities from education; and 3 - ensuring schools abide by human rights obligations when developing and updating students’ Individual Education Plans (“IEPs”).

#### **a) Convention on the Rights of Persons with Disabilities**

These submissions are positioned within international human rights obligations, namely the United Nations Convention on the Rights of Persons with Disabilities (“CRPD”).

Canada ratified the Convention on March 2010 and acceded to the Optional Protocol on December 2018.<sup>8</sup> Specifically, Article 24 of the CRPD states:

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

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<sup>8</sup> UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106 [CRPD]*.

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;
- 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.<sup>9</sup>

In achieving these goals enshrined in the *CRPD*, article 24 sets out numerous obligations that State Parties must ensure and provide for which include the following:

2. a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- c) Reasonable accommodation of the individual's requirements is provided;
- d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

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<sup>9</sup> *CRPD*, *supra* note 8, Article 24(1)

e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.<sup>10</sup>

ARCH submits that in developing plans for education moving forward, the Ministry of Education must ensure that CRPD principles of meaningful and inclusive education are upheld for students with disabilities across Ontario.

## **IV) The importance of accessible online learning**

### **a) Access to technology**

The AODA Alliance recommendations urge the Ministry of Education to immediately “engage an arms-length digital accessibility consultant to evaluate the comparative accessibility of different digital meeting platforms available for use in Ontario schools”.<sup>11</sup> This should include end-user testing, public availability of findings, and direction from the Ministry on which platforms should be used.<sup>12</sup> Further, the recommendations urge the Ministry to direct TVO to make their online learning content accessible, as well as ensure the Ministry’s own digital content is fully accessible.<sup>13</sup>

Prior to the COVID-19 crisis, accessibility of online learning was a looming issue for students with disabilities; however, the pandemic has brought this barrier to the forefront. Importantly, very early in the pandemic, it became clear that access to

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<sup>10</sup> *CRPD*, *supra* note 8, Article 24(2)

<sup>11</sup> *AODA Alliance Brief*, *supra* note 5.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

technology for low-income students was a major barrier to online learning.<sup>14</sup> Without access to technology, students' learning platforms become limited. One report from the Northwest Territories Department of Education, Culture and Employment listed options for how students without internet access could continue receiving materials, such as:

- "Local radio stations could be asked to provide information about accessing materials or to share lessons through story with the entire community (this would be a way to connect the Indigenous language and culture of your community with everyone);
- Telephones and teleconferences could be used to check in with students and provide support throughout the week;
- Indigenous Government and Hamlet offices can be asked to help when possible;
- Completed assignments could be dropped off at agreed upon locations; and
- Where possible, teachers will be asked to put together packages for students and families that include school supplies, blank journals, art supplies and age appropriate books".<sup>15</sup>

While these alternatives may work for some students, they may present further barriers

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<sup>14</sup> "Wanted: Second-hand computers for N.W.T. students" *CBC News*, (31 May 2020), online: <<https://www.cbc.ca/news/canada/north/second-hand-computers-nwt-students-1.5590207>>; "Educators worry gap may grow for disadvantaged students stuck at home" *The Globe and Mail*, (10 April 2020) online: <<https://www.theglobeandmail.com/canada/article-tdsb-aims-to-bridge-gaps-in-at-home-education/>>; "Canada's homes become school and workplace as students switch to online learning" *Toronto Star* (29 March 2020), online: <<https://www.thestar.com/news/canada/2020/03/29/canadas-homes-become-school-and-workplace-as-students-switch-to-online-learning.html>>

<sup>15</sup> Government of Northwest Territories, "NWT Education Bulletin" (30 March 2020) online: <[https://www.ece.gov.nt.ca/sites/ece/files/resources/nwt\\_education\\_bulletin\\_final\\_english\\_3.pdf](https://www.ece.gov.nt.ca/sites/ece/files/resources/nwt_education_bulletin_final_english_3.pdf)> at pg 4.

for students with disabilities. Therefore, ARCH urges the Ministry to acknowledge the first step to accessible online education must be to provide students with adequate access to technology.

## **b) Accessible online platforms and materials**

Even with adequate access to technology, students with disabilities are still facing barriers due to the use of inaccessible teaching platforms. A virtual town hall conducted by the AODA Alliance on May 4, 2020, revealed that TVO online content has significant accessibility barriers.<sup>16</sup> Further, the use of inaccessible video conferencing platforms may prevent students from participating in online learning entirely.

As per Article 24 of the CRPD, State Parties should ensure that students with disabilities have access to meaningful education. In a digital context, this means ensuring students with disabilities have access to online resources. Importantly, Ontario's *Human Rights Code* ("Code") guarantees the right to equal treatment in education, and the right for students with disabilities to be free from discrimination in receipt of education services.<sup>17</sup> Implementing the AODA Alliance recommendations regarding accessible online resources will ensure school boards are fulfilling their legal obligations to students.

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<sup>16</sup> AODA Alliance, "Yesterday's town hall reveals serious hardships facing students" May 2020, online: <<https://www.aodaalliance.org/whats-new/yesterdays-virtual-town-hall-reveals-serious-hardships-facing-hundreds-of-thousands-of-ontario-students-with-disabilities-during-covid-19-crisis-and-makes-practical-recommendations-for-urgent-action/>> [Town Hall].

<sup>17</sup> *Human Rights Code*, R.S.O. 1990, c. H.19 [Code].



## V) Students with disabilities must not be excluded from returning to school

The AODA Alliance recommendations state that the Ministry should immediately issue policy directives to school boards restricting when and how a student may be excluded from school.<sup>18</sup> Further, the recommendations stress the importance of preparing for the return of students, including putting in place plans for students with disabilities who may have specific accommodation needs.<sup>19</sup> ARCH has conducted substantial research on exclusions in schools and has found that, prior to COVID-19, students with disabilities were being excluded from meaningful education at an alarming rate.<sup>20</sup> For the purposes of these submissions, such exclusions include informal denials or the improper exercise of a Principal's duty under section 265 (1) (m) of the *Education Act* to refuse to admit.

In the 2019 report, "If Inclusion Means Everyone, Why Not Me?", ARCH reported that beyond formal expulsions and suspensions (of which students with disabilities account for approximately 48% and 47% respectively) approximately 25% of parents surveyed had been told simply not to bring their child to school.<sup>21</sup> Quite often, exclusions are not documented, and parents are left to find alternative childcare support.<sup>22</sup> This issue may be exacerbated in September if students begin returning to schools. If the necessary accommodations are not implemented prior to a student's return, schools may continue excluding students unnecessarily. As the AODA Alliance recommendations state, the Ministry should dedicate time and resources to ensuring students with disabilities are

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<sup>18</sup> *AODA Alliance Brief*, *supra* note 5.

<sup>19</sup> *Ibid.*

<sup>20</sup> *If Inclusion Means Everyone*, *supra* note 7.

<sup>21</sup> *Ibid* at pg 14.

<sup>22</sup> *Ibid.*

not excluded from classrooms or learning environments due to COVID-19 limitations.

## VI) IEPs must be followed and revised as needed

ARCH stresses the need for IEPs to be followed and for plans to be revised as appropriate and needed within the context of online learning and any return to school efforts. Pursuant to both the *Education Act*<sup>23</sup> and the *Code*, school boards must ensure that IEPs, as accommodation plans for students with disabilities, must reflect the current needs of students with disabilities accessing education services within the COVID-19 context. A 2004 Ministry resource guide on IEPs says that IEPs should be viewed as a working document, and that “if certain strategies cease to be effective, it is imperative that the staff working with the student seek out and implement new teaching methods and accommodations”.<sup>24</sup>

As mentioned, the *Code* guarantees the right to equal treatment in education.<sup>25</sup>

Ensuring IEPs are up to date and COVID-19 specific will allow educators to properly identify and address the needs, and changing needs, of students with disabilities during this time in accessing online learning and in any return to school plans.

## VII) Conclusion

The COVID-19 crisis has caused significant hardships on students with disabilities, and without addressing this, students will continue to experience barriers to education. The Ministry must remain in constant communication with educators, parents and students,

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<sup>23</sup> *Education Act*, R.S.O. 1990, c. E.2.

<sup>24</sup> Ministry of Education, “The Individual Education Plan (IEP)” 2004, online: <<http://www.edu.gov.on.ca/eng/general/elemsec/speced/guide/resource/iepresguid.pdf>> at pg 48.

<sup>25</sup> *Code*, *supra* note 17.

and disability rights organizations to ensure students returning to school in September are well supported and accommodated to meaningfully participate in however education will be delivered.

The AODA Alliance recommendations propose positive steps to ensuring students with disabilities have access to meaningful education throughout the COVID-19 crisis. ARCH endorses these recommendations and urges the Ministry to implement these changes.