

## I. Introduction

In 2010, Canada ratified the United Nations' *Convention on the Rights of Persons with Disabilities (CRPD)*<sup>1</sup>, committing to the implementation of the obligations set out within it.<sup>2</sup> Over a decade later, primary and secondary school students with disabilities in Ontario are left in confusion over what that means for them. Has Canada truly embraced the *CRPD*, and given accommodations for students with disabilities the status of a legally protected right? If so, why does it seem to these students, their parents, and others who champion their equitable access to education, that accommodation operates in Ontario as a privilege: granted with difficulty, and taken away easily? This memo sheds light on Ontario's legal obligation to protect the right of children and youths with disabilities to accommodation in schools. However, it also points to gaps in legislation at both policy and operational levels, that result in continued systemic barriers for these students.

## II. Definitions

Throughout this memo, I will ground my discussion in the definitions for “persons with disabilities”<sup>3</sup>, “discrimination on the basis of disability”<sup>4</sup>, and “reasonable accommodation”<sup>5</sup> laid out in the *CRPD*. Significantly, the *CRPD* does not explicitly

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<sup>1</sup> *Convention on the Rights of Persons with Disabilities*, 30 March 2007, 2151 UNTS 3 (entered into force 3 May 2008), [*CRPD*].

<sup>2</sup> Beachell, Laurie, “Canada Signs UN Convention on the Rights of Persons with Disabilities” (last visited 27 March 2021), online: *Council of Canadians with Disabilities* <<http://www.ccdonline.ca/en/international/un/canada/033007>>.

<sup>3</sup> *CRPD*, *supra* note 1 at Article 1: “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.

<sup>4</sup> *Ibid* at Article 2: “Any distinction, exclusion, or restriction on the basis of disability which has the purpose or effect of impairing...the recognition, enjoyment, or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodations”.

<sup>5</sup> *Ibid* at Article 2: “Necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with

define “disability”, preferring to recognize that “disability” is a concept evolving over time.<sup>6</sup> Looking at the definition of “disability” through the lens of the social model of disability, the *CRPD* offers an understanding of disabilities as resulting from negative attitudes and unwelcome environments, rather than medical conditions that need to be “fixed”.<sup>7</sup> The overarching goal of the *CRPD* is to dismantle the attitudinal and environmental barriers that inform the social model of disability. As such, the duty of non-discrimination placed on *CRPD*’s signatories is not so much a negative duty to not impose further barriers, but a positive duty to offer accommodation in order to combat these barriers.<sup>8</sup> As a signatory, Canada has espoused the *CRPD*’s goal, taking on this positive duty under international law. Thus, its federal and provincial governments must discharge their international obligation by offering accommodations to students with disabilities, and removing barriers that prevent them from getting a quality education.

### **III. Legal Structure of Obligations**

Ontario’s students with disabilities can look to three levels of government action to see how their rights are protected, and when they are not: international, federal, and provincial. Each of these three levels has its own role to play in determining how students with disabilities will be accommodated. At the highest level of jurisdiction, international conventions are significant pieces of law that are meant to inform and supersede both federal and provincial policy. At a federal level, Canada has commitments to students with disabilities to ensure that they are not discriminated

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disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.

<sup>6</sup> *CRPD*, *supra* note 1 at Article 1.

<sup>7</sup> *Ibid* at Article 1.

<sup>8</sup> *Ibid* at Article 2.

against, articulated in Section 15 of the *Canadian Charter of Rights and Freedoms*.<sup>9</sup> Important pieces of federal law for students with disabilities, informed by international law and the *Charter*, include the *Canadian Human Rights Act* and the *Accessible Canada Act*. Normatively, these acts reinforce the *CRPD*'s emphasis on the duty of nondiscrimination, and the removal of barriers for those with disabilities. However, practically, it is legislation at the provincial level that operationalizes these obligations. Consequently, provincial legislation like the *Ontario Human Rights Code*, the *Education Act*, the *Accessibility for Ontarians with Disabilities Act (AODA)*, and the *Ontario Building Code* have the most direct impact on the daily lives of students with disabilities.

In the background of these pieces of legislation, case law laid down by Canada's Supreme Court and Ontario's Human Rights Tribunals dictates how provincial legislation is implemented in the school system. As school boards make decisions on how to accommodate students with disabilities, if they do choose to accommodate them, these decisions are available to be challenged under human rights provisions or the *Charter*. However, the process of challenging such decisions requires time and effort. In addition, those wishing to overturn a school board's decision on accommodations must show that providing the accommodation could be done without "undue hardship".<sup>10</sup> This standard can preclude many accommodations necessary to equitably provide education to students with disabilities.<sup>11</sup>

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<sup>9</sup> *Canadian Charter of Rights and Freedoms*, s 15(1), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11, reads: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability".

<sup>10</sup> Ontario, Ontario Human Rights Commission, *Policy: Accessible Education for Students with Disabilities* (Government of Ontario: 2018) at 83 [*Policy: Accessible Education for Students with Disabilities*].

<sup>11</sup> *Ibid* at 84.

#### **IV. Issues**

In this memo, I specifically address three main issues:

1. Do students with disabilities in primary and secondary school have legally enforceable rights to equitable access to education in Ontario?
2. If the current legislation in place in Ontario were enacted to its full extent, would it fully fulfill its obligations as set out in the *CRPD*?
3. Does current implementation of legislation in Ontario provide students with disabilities equitable access to primary and secondary education?

#### **V. Short Answers**

1. Yes. Accommodations in Ontario's primary and secondary education system for children and youths with disabilities is a legally protected right, guaranteed by international, federal, and provincial law. Yet, in reality, students with disabilities are often denied appropriate accommodation, or receive it in an untimely and imperfect manner.
2. No. At both the federal and provincial level, case law and legislation reveal gaps that are inconsistent with the *CRPD*. Under the *CRPD*, accommodations must be given such that education for students with disabilities is: "Individualized, inclusive, quality, and free".<sup>12</sup> However, case law under the *Human Rights Code* denying these accommodations under the undue hardship standard, as well as The UN Reports on Canada's implementation of the *CRPD*, both reveal areas of concern.
3. No. Students with disabilities still face both environmental barriers and negative attitudes as they seek to access education. Key areas of inequity include the

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<sup>12</sup> *CRPD*, *supra* note 1 at Article 24.

continuing physical inaccessibility of some schools and playgrounds, and difficulty accessing Individual Education Plans, and in-class supports. In addition, lack of education around disabilities means negative stereotypes still persist amongst some teachers and peers.

## **VI. Discussion**

### 1. Ontario's Legal Obligations to Students with Disabilities in the Primary and Secondary Public School System

#### *Legal Obligations Under International Law*

The *CRPD*, the *Convention on the Rights of the Child (CRD)* and the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*, all set out the legal obligations Canada owes to students with disabilities under international law as a state party of these conventions. Article 7 of the *CRPD* and Article 23 of the *CRD* focus specifically on the rights of children with disabilities.<sup>13</sup> Both emphasize that children with disabilities should have effective access to education, such that all children can achieve “the fullest possible social integration and individual development”.<sup>14</sup> The *CRPD* and *CRD* see education as a valuable tool to promote the ultimate goal that all persons with disabilities be integrated into the community as much as possible both in childhood and adult life.<sup>15</sup> Article 24 fleshes this out further, stating that education is fundamentally connected to human dignity and self-actualization for persons with disabilities.<sup>16</sup>

After articulating the ideas underpinning the value of education, Article 24 provides a list of the characteristics that state parties' education systems should feature.

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<sup>13</sup> *CRPD*, *supra* note 1 at Article 7; see also *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) at Article 23, [*CRD*] .

<sup>14</sup> *CRPD*, *supra* note 1 at Article 7.

<sup>15</sup> *CRPD*, *supra* note 1 at Article 24; see also *CRD*, *supra* note 13 at Article 23.

<sup>16</sup> *CRPD*, *supra* note 1 at Article 24.

Education should be inclusive, quality, free, accommodating, supportive, and individualized.<sup>17</sup> Article 9 of the *CRPD* also emphasizes that physical accessibility in schools is a necessary precondition for non-discriminatory education.<sup>18</sup> Finally, *UNDRIP*'s Article 21 ensures that state parties do not forget to take special measures to improve the social welfare of those indigenous children and youth who are also disabled.<sup>19</sup> Ultimately, those articles pertaining to education of students with disabilities make clear that accessible, quality education is not a privilege, but a right that all students are inherently entitled to, and cannot be deprived of without violation of international law.

#### *Legal Obligations Set Out in the Charter and Ontario Human Rights Code*

At the national level, the *Charter* sets out further protections for students with disabilities, while the *Code* channels these protections at the provincial level. S. 15(1) of the *Charter* protects substantive equality for people with disabilities, indicating that the guarantee of equal access to services like education does not necessarily mean equal treatment, but the protection of equitable access in context-specific, individualized ways.<sup>20</sup> Canadian Supreme Court cases like *Eldridge v British Columbia*<sup>21</sup> and *Moore v British Columbia*<sup>22</sup> expand on substantive equality as a constitutionally protected right.

In *Eldridge*, the Supreme Court emphasized that once the government has chosen to provide a benefit, like education, that service should be accessible to all,

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<sup>17</sup> *CRPD*, *supra* note 1 at Article 24.

<sup>18</sup> *Ibid* at Article 9.

<sup>19</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/61 (2007) at Article 21, [*UNDRIP*].

<sup>20</sup> *R v Kapp*, 2008 SCC 41 at para 15, [*Kapp*].

<sup>21</sup> *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624, 1997 CarswellBC 1939 (SCC), [*Eldridge*].

<sup>22</sup> *Moore v British Columbia (Ministry of Education)*, 2012 SCC 61, [*Moore*].

regardless of whether they have a disability or not.<sup>23</sup> In *Moore*, the court also set a high bar for the education services that should be provided to students with disabilities, highlighting that each student should be provided with “*meaningful access to the service*”.<sup>24</sup> *Moore* also sets out the framework for how a student can show a presumptive case of discrimination in the educational context.<sup>25</sup> First, the student must show that they have a disability, which is a characteristic protected from discrimination. Then, the student must show that they have experienced an adverse impact on their education, and that their disability was a factor in that adverse impact.<sup>26</sup> In setting out this test, the Supreme Court offers students with disabilities to show that their section 15 rights have been violated, and receive protection for these rights.

Section 1 of the *Code* channels the protection of equality rights for persons with disabilities set out in the *Charter* and affirmed in *Eldridge* and *Moore*.<sup>27</sup> Although the *Code* makes accommodations that allow students with disabilities to gain equal access to education a protected right, it also imposes troubling limits on this right through its undue hardship standard. This standard permits schools to deny students with disabilities accommodation due to lack of funding, or because the school wishes to put available funding elsewhere.<sup>28</sup> For example, in *Wynberg v Ontario*<sup>29</sup>, the Ontario Court of Appeal held that children with autism over the age of five were not entitled to an Early Intervention Program, because putting scarce resources towards extending the program to include them might deprive younger children with autism of quality programming.<sup>30</sup>

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<sup>23</sup> *Eldridge*, *supra* note 21 at para 53.

<sup>24</sup> *Moore*, *supra* note 22 at para 36.

<sup>25</sup> *Ibid* at para 33.

<sup>26</sup> *Ibid* at para 33.

<sup>27</sup> *Ontario Human Rights Code*, RSO 1990, c H-19, s 1.

<sup>28</sup> *Policy: Accessible Education for Students with Disabilities*, *supra* note 10 at 86.

<sup>29</sup> *Wynberg v Ontario*, [2006] OJ No 2732, 2006 CarswellOnt 4096 (ONCA), [*Wynberg*].

<sup>30</sup> *Ibid* at para 169.

Thus, the protection of the rights of students with disabilities that the *Code* offers is often circumscribed by inadequate funding, or other factors brought forward by schools claiming that accommodation creates an undue hardship.

### *Legal Obligations Under Provincial Legislation*

While the *Charter* and the *Code* set out the protected rights of students with disabilities in broad strokes, Ontario's provincial legislation creates policies that are meant to ensure that the implementation of these protections occur in specific ways. The *AODA*, the *Ontario Building Code*, and the *Education Act* all contain mandates that affect different aspects of the educational experience of students with disabilities. The *AODA* has allowed for the creation of a kindergarten through grade twelve *Standards Development Committee*, that makes recommendations for how schools can best accommodate students with disabilities.<sup>31</sup> With the onset of the COVID-19 Pandemic, the *Committee* has become particularly significant in offering schools guidance as they navigate the creation of accessible online classrooms.<sup>32</sup> However, while pieces of provincial legislation profess to offer the same protections as the *CRPD*, the *Charter*, and the *Code* at a more granular level, closer examination often reveals that they fall short of full implementation of Canada's obligations under these legal instruments.

## 2. Gaps Between the Obligations of Current Provincial Legislation and the *CRPD* *2019 United Nations Report of the Special Rapporteur (the "Report")*

As a part of ratifying the *CRPD* and its optional protocols, a Special Rapporteur from the United Nations is invited to Canada in order to determine whether it is fulfilling

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<sup>31</sup> *Accessibility for Ontarians with Disabilities Act*, SO 2005, c 11, s 8, [AODA].

<sup>32</sup> *Covid-19 Barriers for Students with Disabilities and Recommendations*, 24 July 2020, online: <<https://www.ontario.ca/page/covid-19-barriers-students-disabilities-and-recommendations>>, [Covid-19 Barriers].



its international obligations.<sup>33</sup> In her most recent visit in 2019, the Special Rapporteur pointed out many of the gaps remaining in the legal protection of Canadian students with disabilities, even if Canadian legislation were to be fully enacted. In order to assess these gaps, the Rapporteur met with many organizations including persons with disabilities and received hundreds of written submissions.<sup>34</sup> The Rapporteur noted that gaps in implementation of the *CRPD* should be put in context of Canada's comparative wealth on an international scale: Canada is in the "very high human development" category, as one of the world's highest income countries.<sup>35</sup> Thus, the Rapporteur holds Canada to a high standard in its provision of services like education to people with disabilities.

#### *Provincial Discrepancies in Implementing National Policy*

Although Canada has agreed to implement the *CRPD* education policy on a national scale, this policy is developed and enacted on a provincial level, creating disparities for students with disabilities across the country.<sup>36</sup> The *Report* illustrates that this creates various inequities across the country. For example, in New Brunswick, the provincial government requires the inclusion of students with disabilities in general schools and the provision of supports in an integrated and interdisciplinary way.<sup>37</sup> On the other hand, Ontario's *Education Act* permits the segregation of students into a special education class or school.<sup>38</sup> As of 2018, at least 15% of students in Ontario received special education students.<sup>39</sup> Those receiving special education could include

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<sup>33</sup> *Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Canada*, UNGA/HRC, 43rd Sess, UN Doc A/HRC/43/41/Add.2 (2019) 2 at 1, [*Report of the Special Rapporteur*].

<sup>34</sup> *Ibid* 3 at 7.

<sup>35</sup> *Ibid* 3 at 11.

<sup>36</sup> *Ibid* 4 at 20.

<sup>37</sup> *Ibid* 9 at 46.

<sup>38</sup> *Ibid* 9 at 47.

<sup>39</sup> *Ibid* 9 at 47.

students with physical disabilities, students with learning disabilities, students with behavioural disorders, or gifted students.<sup>40</sup> This model of special education fails to truly address substantive equality. In some cases, it may lead to a lack of individualized education services, while also barring students with disabilities from participation in extracurricular and unstructured activities, and socializing with their peers.<sup>41</sup> Often, those in segregated schools or classrooms do not benefit from after-school programmes, reducing their ability to engage in leisure and physical activities that are essential for health and personal development.<sup>42</sup>

### *The Marrakesh Treaty*

The Rapporteur points out that Canada has other international obligations alongside the *CRPD* towards students with disabilities.<sup>43</sup> In 2016, Canada signed the *Marrakesh Treaty*, which facilitates access to printed works for those who are blind, visually impaired, or otherwise print-disabled.<sup>44</sup> The *Marrakesh Treaty* permits signatories to bypass copyright in order to put a work in an accessible form.<sup>45</sup> The treaty intersects with Article 24(3) of the *CRPD*, which requires state parties to facilitate the education of persons who are blind through the provision of appropriate means and modes of communication.<sup>46</sup> Despite its obligations under Article 24(3), blind or partially sighted children are not taught adequately to read Braille, undermining their literacy.<sup>47</sup>

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<sup>40</sup> *An Introduction to Special Education in Ontario*, online:

<<http://www.edu.gov.on.ca/eng/general/elemsec/speced/speced.html>>.

<sup>41</sup> Luke Reid et al, "If Inclusion Means Everyone Why Not Me" (2018) at 11, online (pdf): *ARCH Disability Law Center*

<<https://archdisabilitylaw.ca/wp-content/uploads/2018/05/If-Inclusion-Means-Everyone-Why-Not-Me.pdf>>.

<sup>42</sup> *Ibid* at 24.

<sup>43</sup> *Report of the Special Rapporteur*, *supra* note 33, 3 at 13.

<sup>44</sup> Government of Canada, *Marrakesh Treaty*, online:

<<https://www.canada.ca/en/innovation-science-economic-development/news/2016/03/the-marrakesh-treaty.html>>.

<sup>45</sup> *Ibid*.

<sup>46</sup> *CRPD*, *supra* note 1 at Article 24.

<sup>47</sup> *Report of the Special Rapporteur*, *supra* note 33, 8 at 40.

Additionally, schools often fail to meet the guarantee of accessible literature in the *Marrakesh Treaty*, as there are often long delays in the transcription of textbooks in order to make them accessible, leaving students without course materials.<sup>48</sup>

### *Intersectionality*

Many Canadian students with disabilities in primary and secondary schools also identify as LGBTQ+ and/or indigenous. In their observations on Canada's initial report regarding the *CRPD*, the UN Committee on the Rights of Persons with Disabilities noted the lack of legislation and public policy in place to protect LGBTQ+ children and youths.<sup>49</sup> In addition, indigenous children with disabilities were denied equitable access to schools, a direct factor in their overrepresentation in Canadian welfare services.<sup>50</sup> Despite the adoption of indigenous child-first policies like Jordan's Principle, indigenous children with disabilities are still often removed from homes because of lack of access to appropriate supports, like education services.<sup>51</sup> Overall, the rights of indigenous children with disabilities, both on and off reserve, are far from fully protected.<sup>52</sup>

### 3. The Current Status of Access to Education for Students with Disabilities in Primary and Secondary School

#### *The AODA and The Standards Development Committee*

The AODA obligates schools to provide fully accessible education services throughout Ontario by January 1, 2025.<sup>53</sup> However, the most recent *AODA Independent Review*, conducted in 2019 by David Onley, indicates that many barriers to primary and

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<sup>48</sup> *Policy: Accessible Education for Students with Disabilities*, *supra* note 10 at 52.

<sup>49</sup> *Concluding Observations on the Initial Report of Canada*, UNCRPD, UN Doc CRPD/C/CAN/CO/1 (2017) at 9.

<sup>50</sup> *Report of the Special Rapporteur*, *supra* note 33, 7 at 34.

<sup>51</sup> *Ibid*, 7 at 32 and 33.

<sup>52</sup> *Ibid*, 7 at 33.

<sup>53</sup> AODA, *supra* note 31, s 1(a).

secondary education still remain in place, and little progress is made to achieve the AODA's goal.<sup>54</sup> A key area of concern is accommodations for students with dyslexia, who make up around 40% of students with disabilities.<sup>55</sup> Despite the large proportion of students with dyslexia, the Ministry of Education does not require appropriate training for teachers, so that they can identify dyslexia and teach remediate reading to students with dyslexia.<sup>56</sup> In addition, intractable attitudinal barriers are often present in K-12 education, especially due to the stigma and stereotyping that surrounds various disabilities.<sup>57</sup> However, Onley does indicate that there are two main areas of positive change. First, Ontario schools are moving towards universal design learning, which is a student-centered approach that offers more flexibility, allowing for greater accommodation.<sup>58</sup> Second, a Standards Development Committee (SDC) has been created to review the school systems and make specific recommendations in order to increase accessibility.<sup>59</sup>

As the COVID-19 pandemic began to affect Ontario's schools in March of 2020, and continuing into 2021, the SDC has committed to identifying barriers that occur in the context of remote learning, making education for students with disabilities inaccessible.<sup>60</sup> As the pandemic continues, the SDC recommends that the Ministry of Education collect data to understand how remote learning is affecting students with disabilities, and then use that data to prepare a comprehensive, systematic, and uniform

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<sup>54</sup> David Onley, "Report of the Third Review of the Accessibility for Ontarians with Disabilities Act, 2005" (2019) at 44, online (pdf): <<https://files.ontario.ca/seniors-accessibility-third-review-of-aoda-en-2019.pdf>>.

<sup>55</sup> *Ibid* at 45.

<sup>56</sup> *Ibid* at 45.

<sup>57</sup> *Ibid* at 45.

<sup>58</sup> *Ibid* at 46.

<sup>59</sup> *Ibid* at 46.

<sup>60</sup> *Covid-19 Barriers*, *supra* note 32, Introduction.

emergency plan.<sup>61</sup> The SDC makes clear that while the pandemic challenges governments to provide new forms of accommodations, such accommodations are necessary for students with disabilities to receive the education they have a right to.

### *The Built Environment in Schools and Playgrounds*

Easy access to schools and playgrounds is essential for students with disabilities to enjoy a quality education. Regulations like the *Ontario Building Code* and the *Integrated Accessibility Standards* seek to ensure barrier-free access to paths of travel, fire safety devices, and washrooms in public schools.<sup>62</sup> Barrier free access is also required between floors, along with adequate turning spaces, ramp dimensions, and doorway and corridor widths.<sup>63</sup> In addition, schools must make play areas accessible to students with disabilities by including sensory and active play components, certain safety features, and space for students with disabilities and their caregivers to move around.<sup>64</sup>

Unfortunately, while all these requirements may seem to create barrier-free schools and playgrounds, restrictions around their implementation prevent these regulations from truly protecting the right to accessible education. The *Integrated Accessibility Standards* only apply to new structures; existing structures will not be affected unless they undergo extensive renovations.<sup>65</sup> Thus, any old schools and playgrounds built prior to their enactment may under provincial legislation legally include physical barriers that can prevent students with disabilities from obtaining equitable access to education. Technical compliance with the *Ontario Building Code* and

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<sup>61</sup> *Covid-19 Barriers*, *supra* note 32, Recommendations: Government.

<sup>62</sup> O Reg 368/13, ss 3.8.2.1, 3.2.4.22, 3.7.4.2(7).

<sup>63</sup> *Ibid* at s 3.4.6.1.

<sup>64</sup> O Reg 191/11, s 80.18(2).

<sup>65</sup> *Ibid* at ss 80.2(1) and 80.18(1).

*Integrated Accessibility Standards* should not excuse schools from removing physical barriers to encourage the integration and participation of students with disabilities.<sup>66</sup>

#### *Individual Education Plans (IEPs)*

Access to accommodation in education is facilitated in Ontario through an IEP, a document that is meant to be tailored to an individual student's educational expectations, and any educational services and programs needed for that student's progress.<sup>67</sup> Unfortunately, there are many difficulties with the IEP process: it is time consuming as there are long waiting lists for professional assessments,<sup>68</sup> In addition, schools often ignore or delay implementation of IEPs because they lack in-class supports, particularly trained teachers and professionals.<sup>69</sup> The slowness in the IEP process is particularly problematic because in order to truly treat accessible education as a right, not a privilege, schools must deliver education services both equitably and quickly.

#### *The Undue Hardship Standard & Provincial Funding*

Many times, accommodations are denied due to claims of inadequate funding. Schools claim that the provision of specific programs or supports is prohibited because they must spend their scarce resources elsewhere.<sup>70</sup> However, Provincial Auditor's 2017 *Annual Report* reveals that the funding given to schools in the first place for these programs and supports is not always allocated according to actual student needs.<sup>71</sup>

Under the current allocation method, school boards that have a low number of students

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<sup>66</sup> *Policy: Accessible Education for Students with Disabilities*, *supra* note 10 at 94.

<sup>67</sup> *Ibid* at 13.

<sup>68</sup> *Ibid* at 52.

<sup>69</sup> *Ibid* at 59.

<sup>70</sup> *Ibid* at 86.

<sup>71</sup> Bonnie Lysyk, "Annual Report 2017 of the Office of the Auditor General of Ontario" (2017) at 439, online (pdf): <[https://www.auditor.on.ca/en/content/annualreports/arreports/en17/2017AR\\_v1\\_en\\_web.pdf](https://www.auditor.on.ca/en/content/annualreports/arreports/en17/2017AR_v1_en_web.pdf)>, [*Annual Report of the Auditor General*].

who need accommodation services but a high overall enrollment get more funding than they need.<sup>72</sup> On the other hand, schools with a lower total enrollment but high number of students who need accommodations get a disproportionately low amount of funding.<sup>73</sup> In addition, the total amount of funding available through the Special Education Grant has not kept pace with the growing enrollment in special education.<sup>74</sup> The structural issues laid out in the 2017 *Annual Report* have a direct impact on whether accommodations are fully implemented. Without full implementation, the legally protected right to equitable access to education is not protected in practice.

## **VII. Conclusion**

In summary, accommodations in Ontario's primary and secondary education system is a legally protected right under international law. The protection of substantive equality guaranteed in the *CRPD* is also expressed by the *Charter* at the national level in Canada, and by the *OHRC* at the provincial level in Ontario. However, current implementation of these rights through legislation and policy reveals that Ontario is not fully protecting the legal rights of students with disabilities. As such, Ontario fails its duty of non-discrimination to students with disabilities. Progress has been made to secure accommodations for students with disabilities, but Ontario has a long way to go before its education system can truly be called accessible.

In order to protect the right to education of students with disabilities, schools must continue moving towards a universal and inclusive classroom model, while ensuring that they do not implement a "one size fits all" approach. The universal classroom model's design for learning will allow students with a myriad of disabilities to

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<sup>72</sup> *Annual Report of the Auditor General*, *supra* note 71 at 442.

<sup>73</sup> *Ibid* at 442.

<sup>74</sup> *Ibid* at 439.

access the materials necessary for a quality education. However, as schools integrate their diverse student body into universal classrooms, they must also continue to keep in mind the discrete needs of students living with different disabilities. Through individualized lesson plans, tailored to each student and delivered in a timely manner, schools may remove the unique obstacles standing between a student with a disability and their education. Thus, the right to education, when truly operating as a right rather than a privilege, demands a more universal view of the classroom context suitable for students with disabilities and an individual focus on the specific barriers standing in each student's way.