

May 2, 2019

Hon. Lisa Thompson  
Minister of Education  
5th Flr, 438 University Ave  
Toronto, ON M7A 2A5

Dear Minister Thompson,

I trust this letter finds you well. I am writing today about the Ministry of Education's consultation on service animals in schools to provide input from the Ontario Human Rights Commission (OHRC).

The OHRC generally supports the overall intent of the Ministry's draft Policy/Program Memorandum (PPM) for school board policies on service animals in schools. The draft PPM appropriately recognizes that under Ontario's *Human Rights Code* (*Code*), school boards have a duty to accommodate the needs of students with disabilities, including the use of service animals, up to the point of undue hardship. The OHRC also supports the requirement for school board policies to have components on communication with parties, accommodation process, protocol for health and safety concerns, roles and responsibilities, training, policy review and data collection.

At the same time, we recommend strengthening the draft PPM by revising it to recognize that the duty to accommodate disability also includes individual needs not related to learning needs. Also, the PPM should make clear that service animal policies must not automatically limit animal species and disability-related functions or animal training and certification. Any requirements related to service animal handling, care and training must be legitimate and defensible under the *Code*. Finally, we recommend that service animal policies acknowledge students with disabilities can take part in the accommodation process and that they have a right to privacy.

## RECOMMENDATIONS

### Duty to accommodate disability in services may include needs not related to learning needs

1. Change the first Ministry expectation under the draft PPM to also allow a student to use a service animal in school to accommodate disability needs not related to learning needs.  
The draft PPM expects school boards to, "allow students to be accompanied by service animals in school when doing so would be an appropriate accommodation to support students' learning needs." We believe that limiting disability accommodation to only "learning needs" is not a proper interpretation of the *Code*.  
Even when not related to the service provided, an educational institution or other organization must permit personal forms of disability accommodation, such as use of an emotional support service animal, a wheelchair, medical cannabis, etc., unless the organization can show a *bona fide* reasonable requirement defensible under the *Code* in the circumstances.  
An educational institution might have a further obligation to help facilitate a personal accommodation not related to learning needs, depending on the circumstance, particularly in a situation like elementary education where responsibilities towards students are broad and include a child's overall wellbeing.

[http://www.ohrc.on.ca/en/news\\_centre/letter-minister-thompson-re-policyprogram-memorandum-ppm-%E2%80%93-school-board-policies-service-animals](http://www.ohrc.on.ca/en/news_centre/letter-minister-thompson-re-policyprogram-memorandum-ppm-%E2%80%93-school-board-policies-service-animals)

## No Code limit on service animal species or function

2. School board service animal policies must not automatically limit the species of animal or disability-related function that could be accommodated.

The OHRC's Policy on accessible education for students with disabilities and the related case law confirm that the duty to accommodate service animals under the *Code* is not limited to dogs and could include other types of animals. Service animals might also perform different functions to accommodate needs related to various types of disabilities such as autism, hearing, vision or mental health conditions. A person might need to show how the type and function of their service animal assists with their disability-related needs.

## No Code requirement for professional service animal training

3. School board service animal policies must not automatically exclude animals that lack designated professional training or certification.

The OHRC's Policy and the related case law confirm that service animals do not necessarily have to be trained or certified by a recognized disability-related organization.

However, where it is not immediately obvious that the animal is performing a disability-related service, a person must be able to show evidence (such as a letter from a doctor or other qualified medical professional) that they have a disability and that the animal assists with their disability-related needs. Service providers and others who receive such documentation should not use their own assumptions and observations to second-guess this verification.

## Bona fide reasonable requirements might be defensible under the Code

The *Code* might permit *bona fide* and reasonable requirements or factors related to a disability accommodation, such as the service animal handling, care and training, if an organization can show such factors are defensible under section 11 of the *Code* and the related case law. Even if a requirement is legitimate and defensible, an exception still might be warranted in individual circumstances, unless undue hardship (significant health and safety risks or excessive costs) would result.

Also, the OHRC's Policy recognizes that there may be some situations where the use of a service animal in school could potentially conflict with the rights of other people, such as disability-related allergies, fear or anxiety. The OHRC's Policy on competing human rights provides a framework for analyzing competing rights situations. Steps should be taken to minimize conflict, wherever possible, through cooperative problem-solving, proper training of staff and students, and raising public awareness of the education provider's legal obligations relating to the use of service animals.

## Students with disabilities can take part in the accommodation process and have a right to privacy

4. Acknowledge in the PPM that school board policies must allow a student with a disability to take part in the process for determining an appropriate accommodation for their service animal, and that the process should maximize the student's right to privacy.

The OHRC's Policy on accessible education says that education providers "must take all necessary steps to... put students with disabilities at the centre of all decision-making processes." Students

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with disabilities should have the opportunity to take part in the accommodation process based on their abilities, maturity and age.

The OHRC's Policy also identifies the responsibility of education providers to maximize a student's right to privacy and confidentiality, including only sharing information about the student's disability with those directly involved in the accommodation process.

The OHRC appreciates the opportunity to comment on the Ministry's draft PPM. We would be pleased to discuss this submission further with you or your staff.

Sincerely,

Renu Mandhane, B.A., J.D., LL.M.  
Chief Commissioner

cc: Hon. Caroline Mulroney, Attorney General  
Hon. Raymond Cho, Minister for Seniors and Accessibility  
OHRC Commissioners