



September 15, 2020

The Honourable Kelvin Goertzen
Minister of Education
Room 168- 450 Broadway
Winnipeg, MB R3C 0V8

Sent by Email

Dear Minister Goertzen,

Re: COVID-19 and respecting the rights of students with disabilities

I am writing you on behalf of the Manitoba Human Rights Commission. I hope this letter finds you and your team safe and well and we thank you for your ongoing efforts to provide continuity of learning to our children and youth during the COVID-19 pandemic.

The unprecedented closure of Manitoba schools has been difficult for all educators, students and their families. Over the past few weeks, the Commission has listened to stakeholders who have shared with us that students with disabilities and students who experience other forms of structural disadvantage face unique and compounded barriers resulting from interruptions to the delivery of their education. Stakeholders tell us that the specific circumstances of students with special learning needs have not been consistently addressed by educational providers during the pandemic, placing them at risk of falling behind and experiencing greater inequities later in life.

Under *The Human Rights Code*, students with disabilities have a right to meaningful access to the education that is available to all other students in Manitoba. Manitoba Education and education providers have a legal duty to accommodate the needs of students with disabilities. Accommodation is necessary to address barriers in education that would otherwise prevent students with disabilities from having equality of opportunity and outcome.

In April 2020, the Commission released *A Human Rights Based Approach to COVID-19: Principles and Actions*, which outlines key considerations for governments and decision makers to align their responses to the COVID-19 pandemic with international and domestic human rights laws, including *The Human Rights Code*, *The Charter of Rights and Freedoms* and the *Universal Declaration of Human Rights*.

In addition to the broad principles outlined in this document, we respectfully ask that you consider the following guidance from the Commission on obligations under *The Code* with respect to students with special learning needs.

In-School Learning, Environmental Adjustments and Personal Contact

The Commission is encouraged that Manitoba's "Welcoming our Students Back: Restoring Safe Schools; COVID-19 K-12 School Settings Practice Guidance and Protocols" (hereinafter referred to as the "Practice Guidance and Protocols Document") recognizes the unique challenges and needs of students with disabilities. We also appreciate the efforts that have taken place at the school division level to create return to school plans that recognize the importance in continuity of learning for students with special education needs.

We have heard from families that during the Spring school closures, their children had limited or no personal contact with classroom teachers, special education teachers, educational assistants, speech language pathologists, social workers and other professionals.

As students return to the classroom and our COVID-19 risk mitigation strategies evolve, the Commission encourages Manitoba Education and education providers to prioritize daily, in-class learning for students with special learning needs, particularly students who cannot participate in online or remote learning options. We recognize that this requires governments, educational and other service providers to work collaboratively and creatively to address issues such as classroom size and location, the availability of personal protective equipment, transportation to and from school, including safe practices for entering and exiting the school premises with limited contact with other students and school staff. However, we strongly encourage this work continue to ensure that children with disabilities can access meaningful education on an equal level with others.

We also recognize that many families of students with special learning needs or with physical vulnerabilities to COVID-19 may be required to continue their learning remotely. In these circumstances, it is imperative that students learning at home have regular and ongoing personal contact with their teachers, special education teachers, educational assistants and others. We also encourage Manitoba Education to work with Manitoba Families and other service providers to ensure that families have the necessary supports in place to ensure the learning and care of their children from home. This may include the increased availability of educational assistants and other professionals who can support the personal services and learning needs of students with complex medical disabilities that are learning remotely.

Finally, whether the learning takes place in-class or remotely, the Commission asks that Manitoba Education and education providers ensure that risk mitigation and management strategies related to COVID-19 do not hamper the ability of educators to

deliver differentiated learning that meets the needs and learning profiles of all students. This is particularly important for students with learning difficulties, who may require direct instruction and additional supports to access education on an equal level with others. For students learning remotely, we recognize that not all families are in a position to provide individualized instruction and supports to their children. As such, the Commission cautions against a “one-size-fits-all” approach to teaching, as we know this will not work for many students with special learning needs and is not consistent with Universal Design and Appropriate Educational Programming principles.

Remote Learning and Technology

The Commission is encouraged that the Practice Guidance and Protocols Document recognizes the need to ensure students have the devices and internet connectivity necessary to support remote learning. We recognize that school divisions and Manitoba Education mobilized quickly during the Spring school closures to ensure students had access to the necessary tools to continue learning during this unprecedented time. Notwithstanding these tremendous efforts, the Commission has heard that access to technology remained a challenge for families and educators. We have heard that the ability of students to participate in remote learning has been impacted by internet access, availability of devices, capacity to use technology and the family’s ability to support its use. These challenges have been compounded for children with disabilities, given that not all of the technology being used to support distance learning is fully accessible.

The duty to accommodate in these circumstances includes providing guidance and support in using technology to staff, students and families through workshops and one-on-one support, where necessary. Manitoba Education and education providers must also ensure that any technology and digital platforms used to deliver education services are fully accessible to students with disabilities.

In addition, we strongly encourage Manitoba Education and education providers to ensure that students with special learning needs continue to have access to assistive technology to support both in-class and remote or distance learning. Lack of access to professional assessment should not be a barrier to obtaining a recommendation for assistive technology. It may be appropriate to waive this requirement for the 2020/21 school year, or find alternative ways of facilitating access for professional consultations and assessments related to assistive technology requests.

Professional Assessments, Individual Educational Plans and Specialized Programming

To align with the obligation to provide reasonable accommodation to the point of undue hardship, Manitoba Education and education providers must continue to ensure that students with special learning needs have access to assessments, including

specialized assessments, and that Individual Education Plans continue to be developed, updated and implemented. The ongoing implementation of Individual Education Plans is fundamental to ensuring students with special learning needs and accommodations are able to thrive during the 2020-21 school year.

The Commission has heard from some families that the development or adaptation of Individual Education Plans is not taking place in a timely fashion and, although mandated by the Appropriate Educational Programming Regulation under *The Public Schools Act*, families have not always been given an opportunity to meaningfully participate in the preparation and updating of their learner's plan. The principles of reasonable accommodation require meaningful dialogue among all parties that share in the responsibility to provide accommodation. We urge Manitoba Education and education providers to ensure that appropriate planning is taking place in consultation with affected families and that Individual Education Plans continue to be implemented and updated on a timely basis.

In conjunction with Individual Education Plans, many students with disabilities rely on specialized programming, classes or supports to ensure they can access meaningful education on an equal level with others. While we appreciate that the sudden disruption to the 2019/20 school year presented several challenges to the continuity of specialized programming, we urge Manitoba Education and education providers to ensure that specialized programming resumes during the 2020/21 school year.

Finally, we know that students with complex medical disabilities may require access to health care support services to enable or continue their in-class and remote learning. We also know that risk factors and protocols associated with their medical care may be evolving in response to the pandemic. In accordance with the Practice Guidance and Protocols Document and the "Guidelines on Supporting Students who Require Interventions or Supports that Cannot be Delivered from a Distance," we ask that Manitoba Education and education providers ensure that appropriate training and personal protective equipment is provided to staff in order to facilitate the care of students with special medical needs.

Conclusion

The responsibility for ensuring equal treatment in educational services for students with disabilities and other *Code*-protected groups rests with government, school divisions, education professionals, unions, among others. **We all play a role in ensuring that COVID-19 does not result in a denial of equal treatment to students with disabilities or other students who face barriers in accessing education.** All persons involved in delivering education services must work to remove barriers that impede access for structurally disadvantaged students.

The MHRC appreciates the ever-evolving circumstances surrounding COVID-19, and we know that Manitoba Education and education providers are continually working

to address its impact on the delivery of education to our children and youth. In doing so, we ask that you keep vulnerable students' rights at the forefront of your planning, and ensure that their needs are supported and accommodated to the point of undue hardship. This principle underlies the philosophy of inclusion at the heart of Manitoba Education's mandate.

In keeping with the MHRC's commitment to public accountability and its duties in serving the people of Manitoba, this letter will be made publicly available on our website.

Sincerely,



Karen Sharma
A/Executive Director

- cc. John Burchill, A/Chairperson, Manitoba Human Rights Commission
The Honourable Heather Stefanson, Minister of Families
Alan Campbell, President, Manitoba School Boards Association
Jason Young, Superintendent, Beautiful Plains School Division
Krista Curry, CEO, Border Land School Division
Dr. Marc Casavant, Superintendent, Brandon School Division
M. Alain Laberge, Superintendent, Division scolaire franco-manitobaine
Roza Gray, Superintendent, Evergreen School Division
Tammy Ballantyne, Superintendent, Flin Flon School Division
Barry Pitz, Superintendent, Fort La Bosse School Division
Reg Klassen, Chief Superintendent, Frontier School Division
Todd Monster, Superintendent, Garden Valley School Division
Shelley Amos, Superintendent and CEO, Hanover School Division
Margaret Ward, Superintendent, Interlake School Division
Selena Mell, Superintendent, Kelsey School Division
Darlene Willetts, Superintendent, Lakeshore School Division
Jerret Long, Superintendent, Lord Selkirk School Division
Christian Michalik, Superintendent, Louis Riel School Division
Dan Ward, Superintendent, Mountain View School Division
Angèle Bartlett and Lorie Henderson, Co-Superintendents, Mystery Lake School Division
Stephen David, Superintendent, Park West School Division
Ted Fransen, Superintendent, Pembina Trails School Division
Donna Miller Fry, Superintendent, Pine Creek School Division
Todd Cunnington, Superintendent, Portage la Prairie School Division
Terry Osioy, Superintendent, Prairie Rose School Division
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Brad Curtis, Superintendent and CEO, Red River Valley School Division
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Brian O'Leary, Superintendent, Seven Oaks School Division
Carolyn Cory, Superintendent, Southwest Horizon School Division
Mike Wake, Acting Superintendent, St. James-Assiniboia School Division
Cathy Tymko, Superintendent, Sunrise School Division
John Zilkey, Superintendent, Swan Valley School Division
Tim DeRuyck, Superintendent, Turtle Mountain School Division
Bev Szymesko, Superintendent, Turtle River School Division
Stephen Ross, Superintendent, Western School Division
Tim Stefanishyn, Superintendent, Whiteshell School Division
Pauline Clarke, Chief Superintendent, Winnipeg School Division
Ray Karasevich, President & CEO, Manitoba Institute of Trades and Technology