



Ontario
Human Rights Commission
Commission ontarienne des
droits de la personne

Ontario Human Rights Commission

Submission regarding the

Government consultation on the education system in Ontario

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Executive summary

An education system that respects human rights and promotes inclusion¹ will be better placed to meet the government's goals of improving academic achievement and preparing all students for the working world.

Ontario's *Education Act* envisions providing students with the opportunity to become highly skilled, knowledgeable, caring citizens who contribute to their society. Ontario's *Human Rights Code (Code)* complements the *Education Act* by confirming that human rights are a necessary precondition and the most effective means to achieve an Ontario where every person enjoys equal rights and opportunities without discrimination, and is able to contribute fully to the development and well-being of the community and the province.

However, despite the aspirational values set out in both the *Education Act* and the *Code*, more work needs to be done to make sure the human rights of students are respected. School environments must be safe, welcoming and inclusive of all students regardless of their identity and must have the competence and capacity to address all forms of discrimination. Ontario's education system must also address the rights of First Nations, Métis and Inuit (Indigenous) students and the unique barriers they face in accessing education.

Unfortunately, many individuals, especially Indigenous peoples, racialized persons, including racialized creed communities, women and girls, people who identify as lesbian, gay, bisexual, trans, queer, two-spirited or questioning (LGBTQ+), people with physical, mental health and intellectual disabilities and people living in poverty experience discrimination and do not benefit equally from Ontario's education system.² Inequality and discrimination have led to lifelong and even intergenerational impacts with significant personal, cultural, economic and social costs.

Data from Canada's [2016 Census](#) indicates that a larger proportion of Indigenous and Black populations age 25 to 34 in Ontario have no educational certificate, diploma or degree compared to non-Indigenous and non-racialized populations. Indigenous and Black populations also have lower labour force participation rates, a lower median employment income and higher unemployment rates. Women in this age group also have a much lower median employment income and a somewhat higher unemployment rate.³ Similarly, people with disabilities have lower levels of educational achievement, a higher unemployment rate, and much lower income than people without disabilities.⁴

Data indicates that young women and girls, especially girls from Indigenous and racialized communities or who have disabilities, as well as LGBTQ+ youth are at greater risk of physical or sexual harassment or assault.⁵

Education is both a free-standing human right *and* an indispensable means of realizing other human rights. It is an "empowerment right" and the primary vehicle by which

economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.⁶

Achieving positive outcomes for all students requires education about human rights. A [2017 public opinion poll](#) conducted for the Ontario Human Rights Commission (OHRC) using a representative sample shows that public awareness about human rights and Indigenous rights is low, while the vast majority of respondents (89%) agree students should be taught more about rights in school.

Curriculum content must reflect the full diversity of Ontario and be culturally appropriate. It is also necessary for education service providers to promote inclusion and adopt universal design for learning to ensure curriculum is accessible to the broadest range of students.⁷

In its 2017-2022 Strategic Plan, the OHRC identified education, Indigenous reconciliation, poverty and criminal justice as focus areas. The OHRC has prepared this submission and recommendations guided by the *Code*, OHRC policies, research, and consultations with experts and affected communities, including the Ontario Federation of Indigenous Friendship Centres and the Métis Nation of Ontario.

To inform the government's consultation on the education system, the OHRC makes six key recommendations. The government should:

- 1. Prioritize student-centered decision-making**
- 2. Provide inclusive, accessible school environments free from discrimination**
- 3. Provide equitable student learning opportunities, assessments and outcomes**
- 4. Enhance curriculum to reflect Ontario's diversity and include human rights content**
- 5. Equip educators to teach human rights and meet their legal obligations**
- 6. Promote reconciliation with Indigenous communities, peoples and students.**

To make education in Ontario inclusive for all students, the government should adopt a human rights lens and implement the recommendations detailed below. This will create the conditions for equal rights and opportunity. It will enable all students to achieve in school without discrimination and succeed in society as envisioned by the *Code* and the *Education Act*.

As of December 14, 2018, the OHRC's recommendations have been endorsed by 28 community organizations and individuals (see Appendix for complete list). The following organizations are amongst those that have endorsed the OHRC's recommendations:

- ARCH Disability Law Centre
- Canadian Women's Foundation
- First Nations, Métis and Inuit Education Association of Ontario

- Métis Nation of Ontario
- Ontario Federation of Indigenous Friendship Centres
- Ontario Federation of Labour
- Ontario Principals' Council
- The Canadian Centre for Gender and Sexual Diversity
- Urban Alliance on Race Relations

The OHRC welcomes further opportunities to engage with the government as it develops its plans for Ontario's education system.

Introduction

Ontario's *Human Rights Code (Code)* guarantees each person the right to equal treatment in the services of education. Education is vitally important to a person's social, academic and economic development. All students have the right to an education that allows them to meet their full potential and contribute to society, yet some continue to experience inequality and discrimination in Ontario's education system.

The OHRC makes this submission in response to Ontario's consultation on the education system. The OHRC encourages the government to apply a human rights lens to all aspects of the education system.

The government's goal for the education system is "to prepare students for success, improve academic achievement and equip them with the tools needed to enter the working world." The *Education Act* sets out an even broader vision, namely to "provide students with the opportunity to realize their potential and develop into highly skilled, knowledgeable, caring citizens who contribute to their society."

Ontario's *Education Act* envisions providing students with the opportunity to become highly skilled, knowledgeable, caring citizens who contribute to their society. Ontario's *Human Rights Code (Code)* complements the *Education Act* by confirming that human rights are a necessary precondition and the most effective means to achieve an Ontario where every person enjoys equal rights and opportunities without discrimination, and is able to contribute fully to the development and well-being of the community and the province.

Unfortunately, the vision of the *Code* is not a reality for many people in Ontario. Individuals and groups, especially First Nation, Métis and Inuit peoples (Indigenous peoples) and racialized persons, women and girls, people who identify with LGBTQ+ communities, people with disabilities and people living in poverty do not benefit equally from Ontario's education system. Inequality and discrimination has led to lifelong and even intergenerational impacts with significant personal, cultural, economic and social costs.

Statistics Canada data indicates that disproportionate segments of the Indigenous and Black populations in Ontario have no educational certificate, diploma or degree; have lower labour force participation rates; lower median employment income; and, higher unemployment rates. Women and people with disabilities also experience these disparities.

Canada and Ontario's international human rights treaty obligations require that the right to education be enjoyed without discrimination.⁸ These same treaty obligations recognize the interdependent nature of the right to education with all other human rights. Achieving positive outcomes in education is dependent on students and their families realizing their right to an adequate standard of living, as well as their right to physical and mental health, social security and to take part in cultural life. Research

shows that many factors impact education outcomes for children and youth, including family stability and support, parental employment, child neglect and abuse, social networks, role models and neighbourhood poverty.⁹

Recognizing and addressing human rights concerns and obligations throughout the education system will help students who experience systemic inequality and discrimination succeed in school and in broader society. This includes ensuring that the curriculum reflects and meets the needs of diverse communities and that all students are taught about human rights and obligations. It requires inclusive teaching methods and educators who reflect diverse communities. Respecting human rights also requires welcoming school environments that are inclusive and actively linked to the communities they serve, where educators and administrators provide equal opportunities in all aspects of school life and work hard to prevent and address discrimination in all its forms.

In its 2017-2022 Strategic Plan, the OHRC identified education, Indigenous reconciliation, poverty and criminal justice as focus areas.¹⁰ The OHRC has prepared this submission and recommendations guided by the *Code*, OHRC policies, research, and consultations with experts and affected communities, including the Ontario Federation of Indigenous Friendship Centres and the Métis Nation of Ontario.

To make education in Ontario inclusive for all students, the government should adopt a human rights lens and implement the OHRC's recommendations. This will create the conditions for equal rights and opportunity. It will enable all students to achieve in school without discrimination and succeed in society as envisioned by the *Code* and the *Education Act*.

Human rights and education

The *Code* and the *Charter*

All children want to be included at school and see their families as well as themselves reflected in the curriculum. Inclusion has a positive impact on the cognitive and social development of children and youth and the overall school environment. Teachers, principals and other education workers share and benefit from this vision of inclusion when learning and work environments are representative, equitable and healthy.

The *Code* guarantees each person the right to equal treatment in the service of education, without discrimination based on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability. This includes equal access to and benefit from Ontario's education system, with necessary accommodations for an individual's disability, creed or other *Code*-related needs. It also includes the right to be free from harassment and a poisoned school environment.¹¹ The *Code* is quasi-constitutional and generally has primacy over the *Education Act* and other Ontario laws.

The *Charter of Rights and Freedoms (Charter)* guarantees people’s civil, political and equality rights in the policies, practices and legislation of all levels of government. The *Charter* applies to publicly-funded schools, colleges and universities. While human rights legislation in Canada is considered quasi-constitutional, it is subject to and must be considered in light of the *Charter*. Section 15 of the *Charter* guarantees the right to equal protection under the law and equal benefit of the law, without discrimination based on various grounds. The equality right guaranteed in section 15 is similar to the purpose of the *Code*. Governments must not infringe *Charter* rights unless violations can be justified under section 1, which considers whether the *Charter* violation is reasonable in the circumstances.

Unfortunately, the systemic interconnections between discrimination, exclusion and unequal outcomes in education produce compounding effects for certain groups, especially Indigenous peoples, racialized persons, women and girls, people who identify as LGBTQ+, and people with disabilities. Unequal inclusion in education undermines access to employment, and perpetuates social and economic marginalization. It limits people’s ability to redress discrimination and realize their internationally recognized rights to work, to have an adequate standard of living and to health. Unequal student achievement also disproportionately forces certain communities, groups and families into precarious, low-wage work that makes them more vulnerable to discrimination and prevents them from improving their circumstances.

Students who come from communities, groups and families that experience systemic inequality and discrimination have a legal right to be included in all aspects of education. That requires a welcoming school environment free from discrimination, harassment and bullying. It also requires understanding the root causes of systemic discrimination and how to address them.

Courts and Tribunals have recognized the importance of human rights in education. In *E.T. v Hamilton-Wentworth District School Board*, the Court of Appeal for Ontario recognized that school boards are statutorily mandated to provide an inclusive and tolerant educational environment that respects the principles of equality enshrined in section 15 of the *Charter*.

In *Chamberlain v Surrey School District No. 36*, the Supreme Court of Canada said that students cannot learn about tolerance and respect for equality unless they are exposed to views that may sometimes differ from those they are taught at home (i.e. “cognitive dissonance”).

In 2017, the OHRC commissioned the Environics Research Group to conduct a public opinion poll on human rights. The results show that while public awareness about human rights is low, the vast majority (89%) of respondents agree students should learn more about human rights in school. Moreover, there is broad support for further accommodating the needs of people with mental health disabilities and addictions, caregivers, transgender students and people with diverse religions. Three in five

respondents (60%) say we don't do enough to support people with mental health disabilities and addictions. A majority also support allowing transgender students to use washrooms based on their lived identity (73%) or providing a prayer space for students (71%).

Education standards, poverty reduction and international human rights treaties

In addition to the *Code*, teachers, principals, school boards and the government are required to follow additional obligations, directives and principles to respect, protect and promote the human rights of all students and their families. These obligations arise through both domestic laws and international standards, the most significant of which are set out below.

Education Act

Consistent with the *Code*, Ontario's *Education Act* sets out expectations and requirements for inclusive education and equitable outcomes. The *Act* connects responsibilities for student achievement together with inclusion. The *Act* provides that school board responsibility for student achievement includes the requirement to "promote a positive school climate that is inclusive and accepting of all pupils, including pupils of any race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability." School boards are also required to "promote the prevention of bullying."

To meet these requirements, school boards are required to develop policies, structures and multi-year plans, with measures to promote student achievement and inclusion and encourage pupils to pursue their educational goals. Boards are also required to monitor and evaluate the effectiveness of these policies. They may also be required to conduct surveys with pupils, staff and parents; review their multi-plans, and evaluate the performance of the board's director of education in meeting all these duties.

The Ministry of Education has issued several directives and guidelines for school boards and principals that support the inclusive education and policy development requirements of the *Education Act*.¹²

Poverty Reduction Act

There is a deep intersection between people who live in poverty and people protected under the *Code*. Ontario's [*Poverty Reduction Act*](#) recognizes the need to provide supports for, and eliminate barriers to, the full participation by all people in Ontario's economy and society and, in particular, persons who face discrimination on the grounds of their race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.

The *Poverty Reduction Act* also recognizes the importance of breaking the cycle of intergenerational poverty by improving opportunities for children, particularly through the education system. It requires that every new Poverty Reduction Strategy include success measures linked to the determinants of poverty, including education.

International human rights obligations

Education is both a free-standing human right *and* an indispensable means of realizing other human rights.¹³

The [International Covenant on Economic, Social and Cultural Rights](#) (*Covenant*) provides that everyone has the right to education, exercised without discrimination; and that education, among other things, shall:

- Be directed to the full development of the human personality and the sense of its dignity
- Strengthen the respect for human rights and fundamental freedoms
- Enable all persons to participate effectively in a free society
- Promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups.

The UN body of independent experts tasked with interpreting and monitoring implementation of the *Covenant* states that governments have a legal obligation to: ensure curricula are directed to these educational objectives; establish a transparent and effective system to monitor progress on these objectives; and refrain from using curricula inconsistent with these objectives.¹⁴

The UN experts also state that governments have a legal obligation to respect, protect and fulfill the essential features of the right to education including that education services are:

- Accessible – to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds
- Acceptable – culturally appropriate for “minorities and Indigenous peoples”
- Adaptable – flexible to meet the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

The UN [Declaration on the Rights of Indigenous Persons](#) (*Declaration*) recognizes that Indigenous peoples’ right to self-determination includes the right to establish and control their educational systems and institutions.¹⁵ The *Declaration* also recognizes that Indigenous individuals have the right to all levels and forms of State education without discrimination, and that Indigenous families and communities retain shared responsibility for the upbringing, training, education and well-being of their children.

Groups and individuals experiencing discrimination in education

The following groups experience systemic inequality and discrimination in Ontario's education system, which negatively impacts their participation in Ontario's economy. For some communities, the impacts are intergenerational and result in historic and continuing social and economic marginalization.

Indeed, Ontario recognizes that certain groups of students have poorer educational outcomes.¹⁶ A disproportionate numbers of students from low-income environments, racialized students, Indigenous students, students who identify as LGBTQ+ or two-spirited, religious minorities, and students with disabilities have lower educational outcomes.¹⁷ The experience takes on unique and compounding forms of exclusion when it involves two or more intersecting *Code* grounds and multiple overlapping aspects of a student's identity.

Racialized students

Socio-economic marginalization

Canada's [2016 Census](#) data indicates that some racialized groups fare worse on educational outcomes. A larger proportion of Black people aged 25 to 34 in Ontario have no educational certificate, diploma or degree compared to the non-racialized population. The gap is even larger for third generation Black people in this age group. A smaller proportion of Black people aged 25 to 34 have studied in the fields of science, technology, engineering and math (STEM), and in education and teaching compared to the non-racialized population. Black people in this age group also have lower labour force participation rates, a lower median employment income and higher unemployment rates compared to the non-racialized population.¹⁸

Discrimination in education

These outcomes correlate with discrimination that Black people face in education. The OHRC's 2003 inquiry report, [Paying the Price](#), and its 2005 [Policy and guidelines on racism and racial discrimination](#) outline Black students' experiences of racism in the school context. In 2005, the OHRC [initiated human rights complaints](#) against the Toronto District School Board and the Ministry of Education alleging that the application of the safe schools provisions of the *Education Act* and related school discipline policies disproportionately impacted racialized students and students with disabilities. While a settlement of the complaints resulted in amendments to the *Education Act* and changes to school discipline policies, data shows that disproportionate suspension and expulsion rates continue for these groups.¹⁹

The OHRC's more recent 2017 consultation report, [Under suspicion](#), shows that Indigenous and racialized students continue to experience discrimination in Ontario's education system. Racialized students reported facing low academic expectations from

teachers, lack of recognition of their academic achievements, and being discouraged from fulfilling their educational potential. One submission to the OHRC described how Black students are routinely streamed to the lowest academic level classes.

Using data from the Toronto District School Board, a 2017 York University [study](#) found that a lower proportion (53%) of Black students were enrolled in the academic program (university-bound) compared to 81% of White, and 80% of other racialized students. Conversely, Black students were over twice as likely to be enrolled in the “applied” program (college-bound) (39% compared with 16% of White and 18% of other racialized students). They were three times as likely to be in the “essentials” program (not eligible for college or university) (9% versus 3% of White and other racialized students). The study commented that, “the racism of low expectations contributes to the normalization of the streaming of Black students into courses below their level of ability.”²⁰

In *Under suspicion* the OHRC also reported that Black immigrant students are often placed in English-as-a-Second-Language (ESL) classes because of their accent or placed below grade level without being tested for their skills.

Indigenous and racialized students told the OHRC that they are more likely to be stereotyped as having behavioural difficulties or threatening, and are more likely to experience harsher treatment, including higher rates of discipline, as well as school calls to police, police stops, questioning and arrests.

Racial profiling – being singled out based on stereotypes that link religion, race or ethnicity with being a security threat – can have devastating educational and personal consequences for youth. Consequences may include poor academic performance, school disengagement and, for some students, involvement in the criminal justice system (sometimes referred to as the “school to prison pipeline”).

In *Under suspicion*, the OHRC makes several recommendations to address racism in schools, including the need for leadership and organizational change strategies, new policies and procedures, anti-bias training, better communications and engagement with affected communities, and monitoring and accountability mechanisms, including data collection.

Women and girl students

Socio-economic marginalization

Statistics Canada reports that while women have reached high levels of education over the past few decades, they continue to experience unequal outcomes in the working world.²¹ Data from the [2016 Census](#) indicates that proportionally more women than men aged 25-34 now have postsecondary diplomas or degrees. Yet, women are still under-represented in fields like engineering and engineering technology, mathematics,

computer and information science, as well as in business and administration. They also have a somewhat lower labour force participation rate, much lower median employment income, and a somewhat higher unemployment rate.²²

The prevalence of sexual and gender-based harassment and violence that girls experience – which occurs across all cultures, religions and income groups – interferes with opportunities and success in school, employment, and other areas of life.²³ This can have a lifelong impact on the health and well-being of girls, and ultimately affects Ontario's social and economic well-being.²⁴

Women and girls are disproportionately the target of sexual assault. Statistics Canada data collected between 2009 and 2014 shows that the median age of victims of police-reported sexual assault in Canada was 18 years. The majority (87%) of victims were female, particularly young women and girls. One in four (26%) victims was children aged 13 and younger.²⁵

2014 Statistics Canada data on self-reported sexual assault indicates that the following groups were at higher risk of sexual assault: women, young people, Indigenous people, homosexual and bisexual people, single people, and individuals with poorer mental health. The alleged offender was most often a friend, acquaintance or neighbour. One in four survivors reported difficulty carrying out everyday activities. Sexual assault was less likely to be reported to police than other crimes.²⁶

Discrimination in education

Unfortunately, school environments are not always safe for girls.²⁷ Girls experience higher levels of physical, psychological and sexual violence. Girls from Indigenous and racialized communities, or who have disabilities, are at an even higher risk.²⁸

Sexual and gender-based harassment interferes with the right to an education without discrimination. Sexual and gender-based harassment has a harsh impact on young students. They may stop doing schoolwork and taking part in school-related activities. Students may skip or drop classes, or drop out of school entirely. They may also resort to drugs and/or alcohol to cope. In extreme cases, students may think about or attempt suicide. Ultimately, sexual and gender-based harassment can affect a student's ability to get an education, earn a living and feel safe and secure in their community.²⁹

The OHRC's [Policy on preventing sexual and gender-based harassment](#) provides specific guidance to education providers about their legal obligations under the *Code*. The policy recognizes that sexual and gender-based harassment often involves a power imbalance that a harasser has over a vulnerable person and can be used as a bullying tactic, including between members of the same sex.³⁰

The curriculum should provide students with key information designed to protect and promote personal safety. That requires a curriculum that directs education on human rights, including matters of sexual health and safety that disproportionately affect girls³¹

and LGBTQ+ students, but can also affect boys. The curriculum must provide all students with the knowledge and tools necessary to make sound decisions, including about consent, and how to get help when they need it.

The OHRC is [intervening](#) in the case of *AB v Ontario (Ministry of Education)*, a case involving recent changes to Ontario's sexual health education curriculum, to protect the rights of girls and LGBTQ+ students, who are among Ontario's most vulnerable and at-risk people.

LGBTQ+ students and families

Socio-economic marginalization

The OHRC has published policies on discrimination based on [gender identity](#) and [sexual orientation](#), and [sexual and gender-based harassment](#). The OHRC's 2014 [Policy on preventing discrimination because of gender identity and gender expression](#) recognizes that LGBTQ+ youth face prejudice and discriminatory treatment at a very challenging time in their lives, and that they are especially vulnerable to harassment and bullying from peers.

The 2016 [Mushkegowuk People's Inquiry](#) into the Indigenous youth suicide pandemic estimated that over 600 children and youth from James Bay coastal communities thought about or tried to take their own lives, while many tragically did. The inquiry reported that two-spirit Indigenous youth are at greater risk of suicide.

Discrimination in education

Sexual and gender-based violence and harassment, as well as other forms of discriminatory treatment, also negatively affect the ability of students who identify as LGBTQ+ to access and benefit from education, equally without discrimination.

Studies confirm that students who identify with LGBTQ+ communities often feel unsafe at school:

- Almost 10% of LGBTQ+ students reported hearing homophobic comments from teachers daily or weekly
- More than one in five (21%) LGBTQ+ students reported being physically harassed or assaulted due to their sexual orientation
- Almost two-thirds (64%) of LGBTQ+ students and 61% of students with LGBTQ+ parents reported that they feel unsafe at school³²
- 65% of trans youth aged 14-18 were bullied
- 42% of trans youth aged 14-18 reported sexual harassment in the last year
- 30% of trans youth aged 14-18 reported being physically threatened/injured
- Over 50% of all trans youth reported engaging in self-harm
- 43% of trans youth aged 19-25 attempted suicide.³³

Providing a welcoming school environment is essential to emotional well-being, health and safety, especially since In LGBTQ+ students may not have the support of their family. This starts with curriculum that reflects and adequately addresses the identities and needs of LGBTQ+ students and their families. The curriculum must require specific identification and discussion about sexual orientation, same-sex marriage and parenting, gay-straight alliances, gender identity, two-spiritedness and related topics. It must also instruct on key information about consent, because students who identify as LGBTQ+ are at greater risk of sexual violence.

Students with disabilities

Socio-economic marginalization

The educational and economic outlook for people with disabilities in Ontario continues to be grim. Despite a highly regulated and complex education framework designed to address “special needs,” students with disabilities continue to experience serious barriers to equality in Ontario’s educational system.³⁴

Barriers in education prevent people with disabilities from gaining employment and participating equally in the economic and social life of our province. The last *Canadian Survey on Disability* indicates that Ontarians with disabilities continue to have lower levels of educational achievement, a higher unemployment rate, and much lower income than people without disabilities.³⁵

Discrimination in education

The 2016 report, [*We Have Something to Say*](#), written by young people with special needs supported by the Office of the Provincial Advocate for Children and Youth, highlights the huge gap between the promise of the school system and the experiences of students with disabilities.

In 2012, the OHRC [intervened](#) in *Moore v. British Columbia (Education)*, a landmark Supreme Court of Canada case that found that a student with dyslexia experienced discrimination when he was denied meaningful access to education. The Supreme Court’s decision affirms that, under human rights laws, students with special needs are entitled to meaningful access to the same level of education available to other students. Meaningful access includes taking positive steps to remove barriers and to remedy the adverse impact of neutral practices.

In September 2018, the OHRC released its [*Policy on accessible education for students with disabilities*](#) including a set of recommendations to address barriers. The policy identifies as barriers:

- Inadequate resources and supports in the classroom
- Long waiting lists for assessments
- Negative attitudes and stereotypes

- Physical inaccessibility
- Inappropriate requests for medical information
- Ineffective dispute resolution processes
- Denial of disability-related accommodations.

The policy also describes how education providers can comply with their responsibilities under the *Code*, including by preventing and addressing discriminatory attitudes, harassment and other treatment, and taking all required steps to accommodate students with disabilities to the point of undue hardship.

The OHRC's recommendations identify a set of principles for the education system to function effectively and allow students with disabilities to thrive. In particular, key players in the education system must take all necessary steps to:

- Remove barriers in the disability accommodation process
- Ensure transparent oversight and accountability for the timely and effective accommodation of students with disabilities
- Implement Universal Design for Learning (UDL) when delivering curriculum and learning activities, while continuing to provide accommodation based on individual needs
- Provide effective training and education for education providers on human rights, disability rights and accommodation
- Put students with disabilities at the centre of all decision-making processes.

In its recent [submission](#) on the Third Review of the *Accessibility for Ontarians with Disabilities Act (AODA)*, the OHRC recommends that the government continue to develop new accessibility standards for education. In an earlier 2017 [letter](#) to government, the OHRC emphasized that students with disabilities must be involved in developing accessibility standards that affect them.

Indigenous students

The vast majority of First Nations, Métis and Inuit students in Ontario attend provincially funded schools.³⁶ The *Code* applies to First Nations peoples living on or off reserves when they interact with individuals and organizations in employment, housing, services, vocational associations and contracts in areas within provincial jurisdiction.

Socio-economic marginalization

Data from Canada's 2016 Census indicates that a much higher proportion of Indigenous people in Ontario aged 25 to 34 have no educational certificate, diploma or degree compared to the non-Indigenous population. A much smaller proportion of Indigenous people in this age group have studied in the fields of STEM, and in education and teaching compared to the non-Indigenous population. Indigenous people also have a lower labour force participation rate, a lower median employment income and a much higher unemployment rate compared to the non-Indigenous population.³⁷

These social and economic disparities are rooted in Canada's history of colonial policies that included residential schools. This shameful history of discrimination, oppression, physical and sexual abuse, and cultural genocide has resulted in traumatic scars on Indigenous families and communities that continue today.

The [Truth and Reconciliation Commission of Canada](#) (TRC) has extensively documented this history and the impacts on Indigenous peoples. The OHRC's [2017 public opinion survey](#) also found a lack of public awareness about the negative impact of Canada's colonial history on Indigenous peoples. The education of non-Indigenous people is a critical element of reconciliation and addressing discrimination.

Discrimination in education

In 2013, People for Education published [First Nations, Métis and Inuit education: Overcoming gaps in provincially funded schools](#), a report produced in collaboration with Indigenous community members. The report highlights large achievement gaps between Indigenous and non-Indigenous students. However, the report also raises concerns that achievement measures are too narrow (literacy, math scores, graduation rates) and fail to capture other important factors like well-being, culture and identity. Focusing only on these measures ignores background factors that would ultimately contribute to greater success for Indigenous students. The report points to a knowledge gap for teachers and educators and recommends all students learn about Indigenous culture, history and the ongoing impact of colonialism. It also recommends that the government make sure Indigenous students and their families have access to the supports they need in and out of school.

In addition, in [Under suspicion](#), the OHRC highlighted the Ontario Federation of Indigenous Friendship Centres' concern that academic streaming of Indigenous students is common, particularly in secondary schools.

In its [Policy on accessible education for students with disabilities](#) the OHRC recommends that the government work with First Nations to implement the recommendations of the 2017 [Ontario First Nations Special Education Review](#) (Garrow Report). That report identifies serious human rights concerns with Ontario's approach to First Nations children with special education needs attending provincial schools, and off-reserve First Nations students who wish to attend First Nations schools. Concerns include inequitable access to special education funding that directly affects the services available to First Nations children with special needs.

In February 2018, the OHRC brought together diverse Indigenous people and members of the human rights community to a dialogue to discuss a vision of human rights that reflects Indigenous perspectives, worldviews and issues. [To dream together: Indigenous peoples and human rights dialogue report](#) outlines what the OHRC heard and makes recommendations.

During the dialogue, participants pointed to the education system as an area of human rights concern. Participants identified the need to further integrate study of Indigenous language, culture, history and rights into curriculum at all educational levels. They noted how geographic barriers resulted in long travel times to and from schools, especially in northern communities, which also negatively impacted participation in extracurricular activities.

Participants identified the important role of the education system in raising the consciousness of current and future generations of youth. Participants called on Indigenous organizations to play the lead role in transmitting and promoting traditional knowledge to the next generation.

To dream together recommends that governments:

- Use the *Declaration* as the organizing framework for understanding, interpreting and implementing Indigenous peoples' human rights, including their rights to education
- Review and amend domestic legislation, including human rights law, to ensure alignment with and accountability for implementing the *Declaration*
- Develop mechanisms to systematically monitor, track and report on the *Declaration's* implementation
- Support the development and maintenance of autonomous Indigenous institutions to advance Indigenous human rights.

By implementing the *Declaration* and the TRC Calls to Action, including eliminating educational and employment gaps and requiring culturally-appropriate school curricula, Ontario will enable Indigenous students to achieve and succeed, and meet its goals for education and for reconciliation.

OHRC recommendations

Human rights laws and obligations require that all students in Ontario are able to access and benefit from the education system without discrimination. Meeting the government's goal of providing education that prepares students for success, academic achievement and equips them to enter the working world is not possible without addressing existing patterns of discrimination in Ontario's education system and taking steps to protect human rights going forward.

The OHRC makes the following recommendations in six key areas that must be addressed to ensure an education system that is compliant with the *Code* and promotes student success.

Ontario's education system must:

1. Prioritize student centered decision-making

- a. Facilitate the active participation of all students so that they have meaningful input on decisions affecting them

- 2. Provide inclusive, accessible learning environments free from discrimination**
 - a. Ensure school environments are welcoming and inclusive for all students and their families regardless of their identity
 - b. Identify, address and ensure accountability for all forms of discrimination, including physical and attitudinal barriers, harassment, bullying and poisoned environments
 - c. Accommodate students' *Code*-related needs to the point of undue hardship, consistent with the *Code* and the OHRC's policies
 - d. Adopt universal design for learning to ensure curriculum is accessible to the broadest range of students
 - e. Implement the OHRC's [2018 recommendations](#) for barrier-free education for students with disabilities

- 3. Provide equitable student learning opportunities, assessments and outcomes**
 - a. Ensure all students have equal access to learning opportunities, co-op placements, extra-curricular activities and supports that reflect their lived experiences, identities and abilities
 - b. Ensure all students have equal opportunity to demonstrate their knowledge by adopting assessment methods that are non-discriminatory, inclusive and accommodate student's *Code*-related needs
 - c. Measure access to student opportunities, achievement and outcomes by collecting and publicly reporting on disaggregated human rights-based data

- 4. Enhance the curriculum to reflect diversity and include content on human rights**
 - a. Include curricular content on human rights and responsibilities under the *Code*, the *Charter of Rights and Freedoms* and international human rights law
 - b. Include curricular content on the history and intergenerational impacts of human rights violations in Canada and globally, including specifically the experiences of Indigenous peoples and racialized communities in Canada
 - c. Include curricular content on disabilities and related physical and attitudinal ("ableist") barriers, including information about mental health disabilities and addictions
 - d. Ensure that curricular content, including that on human development and sexual health, is non-discriminatory by reflecting and addressing the needs of the full diversity of communities, groups and families in Ontario, including LGBTQ+ people

- 5. Equip educators to teach human rights and meet their legal obligations**
 - a. Require teachers to teach human rights-related curriculum, use culturally appropriate approaches to teach all curriculum and actively promote and foster diversity and inclusion
 - b. Require current and prospective teachers and administrators to receive training and professional development opportunities to allow them to meet their obligations under the *Code*

- c. Reflect Ontario's diversity within the complement of educators and administrators by removing barriers to entry for underrepresented groups and actively promoting the hiring of diverse candidates

6. Promote reconciliation with Indigenous communities, peoples and students

- a. Recognize the rights of Indigenous peoples to self-determination and to consultation and cooperation on legislative and administrative measures that may affect them, in accordance with the United Nations *Declaration on the Rights of Indigenous Peoples (Declaration)*
- b. Identify, address and ensure accountability for all forms of discrimination, harassment, bullying and poisoned environments faced by Indigenous students, including systemic barriers to education in both urban and rural settings
- c. Ensure Indigenous students and their families have access to the supports they need in and out of school
- d. Include curricular content that reflects the diversity of Indigenous peoples, and that is developed and delivered by Indigenous peoples
- e. Include curricular content about Indigenous rights, including Canada's treaty obligations; the ongoing intergenerational impacts of colonialism; and the current issues and needs affecting diverse Indigenous peoples and communities
- f. Provide opportunities for Indigenous language revitalization
- g. Provide teachers with the training they need to accurately teach Indigenous history and rights, including requiring teachers to participate in progressive Indigenous cultural competency that includes learning about the *Declaration*
- h. Support the recruitment and retention of Indigenous teachers, administrators and decision-makers, with a particular focus on northern communities and Indigenous languages
- i. Support partnerships between schools and Indigenous organizations that recognize community-based learning and the role of Indigenous organizations in cultivating culturally competent learning environments and supporting student well-being
- j. Support Indigenous community and family engagement and capacity building to improve access for urban Indigenous children and youth
- k. Measure and publicly report on Indigenous students' access to educational opportunities, achievement and outcomes
- l. Track and publicly report on progress in meeting the Truth and Reconciliation Commission Calls to Action with a key focus on those related to education.

Appendix: Endorsements

As of December 14, 2018, the following 28 organizations or individuals have endorsed the OHRC's recommendations in this submission:

1. Action Canada for Sexual Health and Rights
2. ARCH Disability Law Centre
3. Association of Ontario Midwives
4. Brampton Caledon Community Living
5. Canadian Women's Foundation
6. Facing History and Ourselves
7. FAST-Fighting Antisemitism Together
8. First Nations, Métis and Inuit Education Association of Ontario
9. Harmony Movement
10. Human Rights Legal Support Centre
11. Maytree
12. Métis Nation of Ontario
13. Ontario Association for the Support of Physical and Health Educators
14. Ontario Association of Interval & Transition Houses
15. Ontario Coalition of Rape Crisis Centres
16. Ontario Federation of Indigenous Friendship Centres
17. Ontario Federation of Labour
18. Ontario Principals' Council
19. Ophea-Healthy Schools Healthy Living
20. The 519
21. The Canadian Centre for Gender and Sexual Diversity
22. Toronto Trans Coalition Project
23. Urban Alliance on Race Relations
24. Working for Change
25. Youth and Philanthropy Initiative Canada
26. Jeewan Chanicka, educator and community activist
27. Ken Jeffers, educator and community activist
28. Lori Kleinsmith, health promoter

¹ Inclusion means schools are places where everyone learns about diversity and also experiences it. Students see themselves and their classmates reflected in their studies. Students and families feel accepted for who they are in their interactions with their school community. All students are supported in reaching their potential. And, teachers, principals and other education workers share and benefit from the vision of inclusion in a representative, equitable and healthy work and learning environments. Adapted from, *Ontario's Education Equity Action Plan*, 2017, online:

www.edu.gov.on.ca/eng/about/education_equity_plan_en.pdf.

² Two-Spirit: a term used by Aboriginal people to describe from a cultural perspective people who are gay, lesbian, bisexual, trans or intersex. It is used to capture a concept that exists in many different Indigenous cultures and languages. For some, the term Two-Spirit describes a societal and spiritual role that people played within traditional societies, such as: mediators, keepers of certain ceremonies, transcending accepted roles of men and women, and filling a role as an established middle gender. See, *Voices of Aboriginal Trans People, Our Relatives Said: A Wise Practices Guide* (2008) online: 2-Spirited People of the 1st Nations, www.2spirits.com.

³ See Statistics Canada data tables, 2016 Census, online: www12.statcan.gc.ca/census-recensement/2016/dp-pd/dt-td/index-eng.cfm.

⁴ See Statistics Canada, Special tabulation, based on the *Canadian Survey on Disability, 2012*, as cited by the OHRC's publication, *By the numbers: A statistical profile of people with mental health and addiction disabilities in Ontario*, 2015 [*By the numbers*] at 48 (available online at: www.ohrc.on.ca/en/numbers-statistical-profile-people-mental-health-and-addiction-disabilities-ontario).

⁵ See, *Police-reported sexual assaults in Canada, 2009 to 2014: A statistical profile*, Cristine Rotenberg, Statistics Canada, 2017, online: www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/54866-eng.htm. See also, *Self-reported sexual assault in Canada, 2014*, Shana Conroy and Adam Cotter, Statistics Canada, 2017, online: www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/14842-eng.htm. See also, "The Road to Health: A Final Report on School Safety," *School Community Safety Advisory Panel* (2008), online: www.falconerschoolsafetyreport.com/finalReport.html ("Falconer Report"). See also, Taylor, C. et al., "Final Report: Every Class in Every School: The First National Climate Survey on Homophobia, Biphobia, and Transphobia in Canadian Schools" (2011) *Egale Canada Human Rights Trust*. Saewyc, E., Pyne, J., Frohard-Dourlent, H., Travers, R., & Veale, J., (2017). See also, *Being Safe, Being Me in Ontario: Regional Results of the Canadian Trans Youth Health Survey*. Vancouver, BC: Stigma and Resilience Among Vulnerable Youth Centre, School of Nursing, University of British Columbia. Online: http://apsc-saravyc.sites.olt.ubc.ca/files/2018/04/SARAVYC_Trans-Youth-Health-Report_Ontario-WEB-FINAL.pdf.

⁶ See, [General Comment No.13 on the right to education](#), UN Committee on Economic, Social and Cultural Rights, E/C.12/1999/10, at para 1.

⁷ See, *Inclusive Design: Students, Families and Staff Working Together*, Jeewan Chanicka, Huffington Post, February 2, 2018, online: https://www.huffingtonpost.ca/jeewan-chanicka-/inclusive-design-students-families-staff_a_23364995/.

⁸ See the United Nations' *International Covenant on Economic, Social and Cultural Rights*.

⁹ See "Adverse Childhood Experiences (ACEs)", Centers for Disease Control and Prevention, online: www.cdc.gov/violenceprevention/acestudy/index.html.

¹⁰ The OHRC's [2017-2022 Strategic Plan, Putting people and their rights at the centre](#), commits the OHRC to use its mandate to bring a human rights lens to government, educational institutions and community strategies aimed at educating children and youth about human rights and responsibilities and addressing systemic discrimination in the education system. As part of our focus on education, we are consulting with various individuals and organizations involved in the education sector, including Indigenous groups and educators. We are also talking with youth who are reminding us how essential it is to put students at the centre of decision-making.

¹¹ A poisoned environment is created when unwelcome conduct or comment related to any *Code* ground is pervasive within an institution, and results in a hostile or oppressive atmosphere for one or more people identified by the *Code* ground. A consequence of creating a poisoned environment is that certain people are subjected to terms and conditions in education that are quite different from those experienced by people who are not subjected to the comments or conduct. This gives rise to a denial of equality under

the Code. Education providers have a duty to maintain a non-discriminatory environment, to be aware of a poisoned environment that exists, and to take steps to respond and eliminate it (*Ghosh v Domglas Inc.* (No. 2)(1992), 17 C.H.R.R. D/216 (Ont. Bd. Inq.) at para. 76 [as cited in *McKinnon v. Ontario (Ministry of Correctional Services)*, [2002] O.H.R.B.I.D. No. 22]; *Ross v New Brunswick School District No. 15*, [1996] 1 SCR 825; *Welykyi v. Rouge Valley Co-operative Homes Inc.*, 2016 HRTO 299 (CanLII)].

¹² See the Ministry of Education's *Realizing the Promise of Diversity: Ontario's Equity and Inclusive Education Strategy, 2009; Policy/Program Memorandum No. 119: Developing and Implementing Equity and Inclusive Education Policies in Ontario Schools, 2009*; and, *Equity and Inclusive Education in Ontario Schools: Guidelines for Policy Development and Implementation, 2009*.

¹³ See General Comment No.13, *supra*, note 6.

¹⁴ *Ibid*, at para 49.

¹⁵ In May 2018, the Parliament of Canada passed [Bill C-262](#), *An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples*. The Bill is currently before the Senate as of December 5, 2018.

¹⁶ See, *Ontario's Equity Education Action Plan 2017*, online: www.edu.gov.on.ca/eng/about/education_equity_plan_en.pdf.

¹⁷ For example: a disproportionate number of students from low-income families, racialized students, Indigenous students and students with special education needs are enrolled in applied courses and are under-represented among students who graduate and go on to pursue postsecondary education. See, *Ontario's Education Action Plan 2017*, *ibid*.

¹⁸ See Statistics Canada data tables, *supra*, note 3.

¹⁹ See, *Policy on accessible education for students with disabilities*, OHRC 2018. See also, *Under suspicion: Research and consultation report on racial profiling in Ontario*, OHRC 2017.

²⁰ James, C.E. & Turner, T. (2017). *Towards Race Equity In Education: The Schooling of Black Students in the Greater Toronto Area*. Toronto, Ontario, Canada: York University. Online: <http://edu.yorku.ca/files/2017/04/Towards-Race-Equity-in-Education-April-2017.pdf>.

²¹ Statistics Canada, *Women in Education, Women in Canada: A Gender-based Statistical Report, 2010-2011*, Sixth edition, online: www150.statcan.gc.ca/n1/pub/89-503-x/2010001/article/11542-eng.htm

²² See Statistics Canada data tables, *supra*, note 3.

²³ See Canadian Women's Foundation Fact Sheet: Sexual assault and harassment, online: www.canadianwomen.org/wp-content/uploads/2017/09/Facts-About-Sexual-Assault-and-Harassment.pdf

²⁴ See *Breaking the Silence: Final Report of the Engagement Process for the Federal Strategy to Address Gender-based Violence*, available online: www.swc-cfc.gc.ca/violence/strategy-strategie/breaking-briser-en.html#background

²⁵ See, *Police-reported sexual assaults in Canada*, *supra*, note 5.

²⁶ See, *Self-reported sexual assault in Canada*, *supra*, note 5.

²⁷ See, Ontario's Student Voices on Sexual Violence Survey, online: <https://www.info-sv-vs.ca/en/Home>. See also: Angus Reid Institute study, *#MeToo: Moment or movement?*, online: <http://angusreid.org/me-too/>; Government of Canada, *Harassment and sexual violence in the workplace public consultations - what we heard*, online: www.canada.ca/en/employment-social-development/services/health-safety/reports/workplace-harassment-sexual-violence.html#h2.6.

²⁸ See, *The Road to Health*, *supra*, note 5.

²⁹ *Ibid*, at p.6.

³⁰ OHRC *Policy on preventing sexual and gender-based harassment*, 2013, PDF version at p.5.

³¹ "The Road to Health", *supra*, note 5.

³² See, *The First National Climate Survey on Homophobia, Biphobia, and Transphobia in Canadian Schools*, *supra*, note 5."

³³ See, *Regional Results of the Canadian Trans Youth Health Survey*, *supra*, note 5.

³⁴ The Office of the Auditor General of Ontario commented in [Volume 1 Chapter 3.08](#) of its 2017 annual report that, "there is still work to be done to provide equitable outcomes for students with unique needs, for example, Indigenous learners and students with special education needs." Many of the written submissions made to the OHRC in 2017 by education stakeholders, as part of the policy development process, indicated ongoing challenges faced by students with disabilities at all levels of the province's education system. Excerpts from these written submissions are included, where applicable, throughout this policy. In May 2018, a research partnership involving Community Living Ontario, University of

Western Ontario, Brock University, ARCH Disability Law Centre, Brockville and District Association for Community Involvement, and Inclusive Education Canada released the results of a research study, [*If Inclusion Means Everyone Why Not Me*](#), undertaken to, among other things, assess the effectiveness of Ontario's education system for students with intellectual disabilities. The results indicate ongoing serious barriers for students with intellectual disabilities, including a lack of disability-related accommodations, high rates of suspensions and expulsions, bullying, and an inadequate dispute resolution process.

³⁵ See Statistics Canada, Special tabulation, based on the *Canadian Survey on Disability, 2012*, as cited by the OHRC's publication, [*By the numbers: A statistical profile of people with mental health and addiction disabilities in Ontario, 2015*](#).

³⁶ See [*A Solid Foundation: Second progress report on Ontario's First Nations, Métis and Inuit Framework. Toronto*](#), Government of Ontario 2013, p.11, citing preliminary data from Statistics Canada's 2011 National Household Survey.

³⁷ See Statistics Canada data tables, *supra*, note 3.