

ACCOMMODATING DISABLED COLLEGE STUDENTS

OPINION HANDED DOWN BY THE COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE [HUMAN AND YOUTH RIGHTS PROTECTION COMMISSION]

In keeping with its mission to promote and uphold the principles set out in the *Québec Charter of Human Rights and Freedoms*, the Commission des droits de la personne et des droits de la jeunesse has, for more than 30 years, been involved in accommodating disabled individuals with a view to taking account of their particular educational needs, from preschool through university.

Until very recently, requests submitted to the Commission involved the adaptation of educational services for students with disabilities, social maladjustments or learning disabilities (EHDAA) in the preschool, elementary and secondary spheres. For some years, however, we have been witnessing a new phenomenon, with the Commission increasingly called upon to deal with matters involving the accommodation of special-needs students at the college level.

In this regard, several major stakeholders from public and private colleges alike have asked the Commission to clarify certain questions regarding their obligation to accommodate these students. Because the number and scope of the different problems concerned argued in favour of a systemic, structuring approach rather than one based on a case-by-case method, the Commission decided to establish an integrated research, consensus-building and cooperation framework with the main organizations in question. In the spring of 2012, this process culminated in the publication of an opinion entitled *L'Accommodement des étudiants et étudiantes en situation de handicap dans les établissements d'enseignement collégial*.

To discuss the issues at hand and identify relevant strategies for analysis, the Commission formed a working group composed of representatives from 30-odd bodies, including the Ministère de l'Éducation, du Loisir et du Sport (MELS) [Department of Education, Recreation and Sport], the Fédération des cégeps [Federation of Quebec Colleges], the Association des collèges privés du Québec (ACPQ) [Association of Private Quebec Colleges], various groups involved in defending the rights of the disabled and the union executives concerned.



DANIEL DUCHARME
Researcher
Commission des droits de la personne et des droits de la jeunesse



KARINA MONTMINY
Legal counsel
Commission des droits de la personne et des droits de la jeunesse

The work of these parties, which was carried out between April 2010 and April 2011, informed the Commission's deliberations on the subject, focused its analysis and resulted in various recommendations to the authorities in question on their obligation to accommodate disabled students.

A GROWING SOURCE OF NEW CHALLENGES FOR COLLEGES

The cause behind the numerous requests addressed to the Commission is the rapid growth in disabled college student populations that has characterized the past ten years.

The data submitted by the two colleges designated to coordinate delivery of services to disabled students in the public system show that the number of disabled students enrolled in college quintupled between 2005 and 2009, from 860 to 4,309. A significant portion of this increase was attributable to students with learning disabilities, mental-health problems or attention-deficit disorders (ADD). In 2005, 186 students had one or more of these disabilities; four years later, the figure stood at 2,143, an increase of almost 12-fold.

An upward trend in disabled clientèles was also noted in Quebec's subsidized private colleges. In a report published in January 2009, the ACPQ, on the basis of a sample of 12 such colleges representing slightly more than half (52%) of the private system, observed that, between the fall session of 2006 and that of 2008, there was a 238% growth in the disabled population (from 55 to 186 students). Again, this upsurge was more pronounced for students with learning disabilities, mental-health problems and ADD (34% of the overall increase—i.e., from 25 students in the fall of 2006 to 110 in the fall of 2008).

In both the public and private college networks, the latter groups are now referred to as “emerging” populations. In 2005, these students represented 21.6% of all special-needs students formally identified by the CÉGEPs. By 2009, that proportion had risen to almost half (49.7%) of known CÉGEP disabled students. The same phenomenon characterized the private system. In 2006, “emerging” populations represented 45.5% of all disabled students; by the fall of 2008, the figure was 59.1%.



This state of affairs must be seen as the outcome of a naturally occurring, more progressive attitude toward the disabled combined with the normative framework governing academic adaptation practices at the primary and secondary levels, the relevant jurisprudence and the implementation of the educational-reform process begun in the mid-1990s. The main effect of this situation was that more disabled students were able to attend regular preschool, primary and secondary classes while benefiting from special-needs services. In so doing, many of these students have now met the conditions required to be admitted to college.

As a result, the college network is currently at a crossroads as regards the manner in which it is discharging its responsibilities to disabled students. To maintain the balance required to accommodate these clients, stakeholders from the college network must review conventional practices to ensure that academic institutions are able to respond effectively to all needs—traditional and emerging—without discrimination.

LEGAL FOUNDATIONS FOR THE RECOGNITION OF THE SPECIAL NEEDS OF DISABLED STUDENTS

While neither the *General and Vocational Colleges Act*¹ nor the *Act Respecting Private Education*² contains provisions obliging educational institutions to provide disabled students with services specific to their needs, other, more general legislation that recognizes the rights of the disabled has established legal foundations that specify colleges' responsibilities in this regard. This is true for the *Québec Charter of Human Rights and Freedoms*, which sets out the rights and freedoms guaranteed to every individual, as well as the *Act to Secure Handicapped Persons in the Exercise of their Rights with a View to Achieving Social, School and Workplace Integration*.³

The *Québec Charter of Human Rights and Freedoms*, the Commission's enabling legislation, sets forth the legal foundations constituting the central mainstays of the recognition of the educational needs of disabled students. These are the right to equal treatment (s. 10), the right to privacy (s. 5) and the right to confidentiality (s. 9).

Disabled students are covered by s. 10, as the *Charter* prohibits discrimination founded on "a handicap or the use of any means to palliate a handicap". The interpretation of "handicap" here is broad, and more liberal than the definition of "handicapped person" contained in the *Act to Secure Handicapped Persons in the Exercise of their Rights with a View to Achieving Social, School and Workplace Integration*. Under the *Charter*, the courts recognize a number of disabilities, both

physical and psychological, episodic and temporary, including mental-health problems and learning disabilities.

The courts' interpretation of "the use of any means to palliate a handicap" is also broad, recognizing various means for so doing, from the employment of a rehabilitation worker for a disabled child in a daycare to the use of Quebec Sign Language. The choice of resource falls to the disabled individual and, as such, he or she cannot be forced to use any other.

Because the prohibition against discrimination applies to the educational services offered to all students by public and private educational institutions, the latter cannot refuse to admit any disabled student who meets the established admission conditions or refuse to provide educational services. Unless they experience undue hardship—for example, if the health or safety of other students or employees and staff are compromised—these institutions are required to show that all possible and reasonable measures have been taken to accommodate such individuals.

[...] the number of disabled students enrolled in college quintupled [...] from 860 to 4,309.

Accommodation measures must be established and implemented with the student's cooperation, as well as that of institutional staff involved—i.e., teachers and special-needs workers. Each student must be assessed in accordance with his or her own individual capabilities and needs, not with alleged group characteristics. The assessment must be objective and bear on the student's actual capabilities.

As regards the right to privacy, the courts associate it with protection of the right to make fundamentally personal decisions without undue external influence. Under this provision, disabled students or their legal guardians, in the case of minors, have the right not to disclose their medical condition and are the sole holders of this right.

With respect to the right to confidentiality, the disclosure of confidential information entrusted to a professional is authorized only upon the consent of the individual concerned or if the law expressly provides for such disclosure. Furthermore, a professional may not disclose the conclusions of a report he or she has written or an opinion about a student unless the latter so agrees.

¹ R.S.Q., c. C-29.

² R.S.Q., c. E-9.1.

³ R.S.Q., c. E-20.1.



Reasonable Accommodation for Disabled Students: From Admission to Graduation

The Commission identified several measures established by colleges to accommodate disabled students at various stages, and numerous difficulties involved in implementing those measures. Many students, for example, are denied such measures because their disability is not recognized by the MELS for the purposes of funding special-needs services or because they have not been diagnosed, either at all or recently. In these circumstances, students with a learning disability, mental-health problem or ADD (with or without hyperactivity) are liable to be overrepresented. According to the Commission, these students are victims of “systemic” discrimination, as they are struggling with institutional policies and administrative rules and practices involving a number of stakeholders.

Among the various topics examined by the working group, the Commission analyzed the practices currently in place at educational institutions to ensure that the college network is actually promoting the right of all disabled students to equal treatment. In that analysis, the Commission focused particularly on the circumstances of “emerging” populations.

Service Funding and Student Financial Assistance

The Commission recognized that, despite certain pitfalls involved in funding special-needs services, colleges have taken the initiative and established a variety of measures to accommodate disabled students, including those with an “emerging” disability, even though they receive no MELS funding to do so. Nevertheless, special-needs services delivery can vary, depending on the size and location of the college in question.

One such pitfall stems from the rules for implementing the *Accueil et intégration des personnes handicapées au collégial* [Intake and Integration of Disabled College Students] program,⁴ which apply to public educational institutions. In keeping with these rules, only those students who have “significant and persistent limitations in the performance of their daily activities” are entitled to an individualized education plan to establish the services and funding granted.

Some disabilities, such as certain mental-health problems, learning disabilities and ADD, are therefore excluded from the scope of the program. In the view of the Commission, these exclusions have a discriminatory effect on students who have such disabilities and require special-needs services to succeed. This state of affairs exists because program rules fail to

take account of the broad interpretation given by the courts to the discriminatory ground of “handicap” that includes these types of disabilities. To rectify this situation, the Commission deemed it necessary to review existing funding terms and conditions so they comply with the *Charter* and apply to private institutions as well.

Public colleges’ refusal to accommodate disabled students because they are not covered by the program is also discriminatory, unless these institutions can demonstrate that the measures to be developed cause them undue financial hardship.

In some circumstances, disabled students must avail themselves of financial-assistance measures that do not come under the purview of the educational institutions—this is the case, for example, for the Student Financial Assistance program administered by the MELS. The loan and bursary provisions of the *Act Respecting Financial Assistance for Students*, however, have been broadened to cover individuals with a major functional deficiency resulting in significant and persistent limitations in the performance of their daily activities. These requirements *de facto* exclude students without such limitations—i.e., those with “emerging” disabilities. To ensure that this definition, which is contained in both the *Act Respecting Financial Assistance for Students* and the *Regulation Respecting Financial Assistance for Education Expenses*, reflects the interpretation of disability-based discrimination contained in the *Charter*, the Commission recommended that it be amended accordingly.

The Secondary School – College Transition

It is up to each student to provide the college concerned with the information allowing it to establish and implement the accommodations required. The lack of a formal transition process between secondary and college-level educational institutions, however, makes this difficult, as students often find themselves alone in dealing with bureaucracies with different rules and regulations, and often do not have the support they need to move harmoniously from one milieu to the other.

In the opinion of the Commission, it is paramount that a formal process aimed at facilitating that transition be put in place by school boards and colleges. Although this process could benefit all students across the board, if disabled students are to have access to college without discrimination, as

⁴ LECLERC, C. (1992). *Accueil et intégration des personnes handicapées au collégial*, 2nd edition. Quebec City: Direction Générale de l’Enseignement Collégial, Ministère de l’enseignement supérieur et de la science, p. 8.



well as an equal chance at success, it must take their specific needs into consideration above all. The efforts of the working group helped the Commission identify following essential components of such a process.

1 DEVELOPING A SPECIFIC GUIDANCE PROCESS FOR DISABLED SECONDARY STUDENTS

In keeping with the objectives of Quebec's Programme de Formation de l'École québécoise pour le second cycle du secondaire [Education Program for Secondary Cycle Two], public and private secondary educational institutions should develop a specific, targeted approach for EHDAA that takes the particular career-choice needs of these students into account and facilitates their eventual integration into a college training program.

2 DISCLOSURE OF DISABILITY BY THE STUDENT

Given the importance of disclosure of disability to the accommodation process, and the fact that educational institutions cannot oblige students to make such a disclosure, it is vital that colleges be able to develop tools to inform students of the advantages of such disclosure, and that these tools be made available throughout the secondary-school network.

3 A SPECIFIC INTAKE MECHANISM FOR DISABLED COLLEGE STUDENTS

As considerable research has shown that the successful completion of courses the first term of college constitutes a major predictor of overall academic achievement and graduation, resources dedicated to helping students as they start out are essential. The working group's efforts showed that these resources could be used more extensively for disabled students and, to that end, work in closer cooperation with the colleges' special-needs services.

The Diagnosis: Access and Scope

In accordance with the rules for implementing the Accueil et intégration des personnes handicapées au collégial program, public colleges do not receive funds for delivering special-needs services for disabled students unless the service request is accompanied by a medical report confirming the diagnosis. These rules apply whether or not students have had access to such services in the past. This requirement would seem overly severe, given that the resources qualified to make diagnoses are limited, especially for "emerging" clients. This state of affairs makes recognition of the right to equal access a college education for special-needs students problematic.

For students who have already used special-needs services at other levels of the education system, the responsibility to provide medical evidence seems unjustified; indeed, the jurisprudence does not seem to support such a requirement. The criterion developed by the courts deals with the disabled individual's obligation to disclose sufficient information to

the educational institution in question. In the view of the Commission, this criterion could be met by submitting the student's individualized education plans, which explicitly set forth the latter's abilities and needs, or any other such document or report identifying his or her disability-related educational requirements, as developed by the staff of schools attended in the past.

For the students who have not had previous access to special-needs services, the Commission deemed that compliance with right-to-equality provisions obliges colleges to provide services to students with particular needs awaiting a diagnosis, regardless of when the request is submitted. Institutions must be able to identify the nature of the problem and, where applicable, the measures to be established in the interim. Refusal to do so would appear discriminatory.

To facilitate the establishment of accommodation measures, individuals dealing with disabled students must have access to external resources when more specialized services prove necessary to make a diagnosis, advise college staff and help monitor the students in question, especially those with an "emerging" disability. For example, enhancing cooperation with health and social services centres by formalizing explicit operating agreements would help to reach this goal.

Individualized Education Plans

The development of an individualized education plan is essential to ensuring the disabled are able to exercise their right to equal treatment, at all levels of education. The plan facilitates the identification and the implementation of accommodation measures that will enable disabled students to continue their education, take advantage of equal opportunities to succeed and eventually receive a diploma. It also establishes a framework for monitoring those measures and conducting a continuous evaluation of their relevance, with a view to making any necessary adjustments. Furthermore, the plan specifies the roles and responsibilities of each service provider.

[...] the Charter prohibits discrimination founded on a "handicap or the use of any means to palliate a handicap".

While the pertinence of this process is legally recognized at the preschool, primary and secondary level by the *Education Act*, no similar legal obligations exist at the college level. As things now stand, colleges draft service plans in order to qualify for funding; these plans itemize the accommodation measures established, but do not make it possible to guarantee



follow-up or identify the roles and responsibilities of the educational staff involved in their implementation.

The Commission felt it was necessary that the *General and Vocational Colleges Act* and the *Act Respecting Private Education* be amended to include a provision stipulating that colleges must develop an individualized education plan for disabled students. These amendments would help ensure service continuity and consistency at all levels, and reinforce practices aimed at meeting legal accommodation obligations to disabled students.

In the view of the Commission, individualized education plans will be difficult to implement without MELS support. Such backing could take the form of complementary measures such as the creation of assessment and resource centres for special-needs students, like those in Ontario, via the hiring of specialized professionals and the optimization of complementarity agreements between the health and education networks.

Staff Training and Support

A fragmented knowledge of the needs of disabled students may result in feelings of unease toward them, and even doubts about the accommodation measures developed. According to a number of working-group participants, several college-network stakeholders need to enhance their knowledge of the limitations related to certain disabilities, as well as the associated educational needs. It would appear this situation is more noticeable with respect to “emerging” clientèles: a considerable percentage of college staff claimed to be insufficiently prepared to meet the needs of these students, with the result that the vicious circle of prejudice and stereotypes surrounding them continues to be propagated.

Employee training and support does not mean that all staff members need to become disability specialists; rather, the goal is to provide them, in a professional-development context, with opportunities to develop skills useful in integrating disabled students, notably as regards familiarity with differentiated instruction, learning assessment, needs assessment, participation in developing individualized education plans, class management in a context of diverse needs, colleges’ legal obligations towards disabled students and so on.

When all is said and done, if they are to create an environment conducive to learning as well as to the success of all disabled students, college administrations must be attentive to the training, knowledge-transfer and support needs of all categories of personnel interacting with these students. Accordingly, the

Commission deemed that training for college administrators is vital to ensuring they are able to better identify the organizational and educational challenges related to the integration of disabled students. By providing such training, colleges will be better equipped to support their employees to the best of their abilities.

Internships and Professional Bodies

Colleges are legally obliged to accommodate students when they are doing an internship as part of their program. Still, this obligation is shared with the internship environment, which has similar obligations—meaning it cannot refuse a student considering he or she has a disability. Such a refusal would be discriminatory under the *Charter*.

At the same time, students have their own responsibilities at this stage of their college education. If they wish to take advantage of accommodation measures during an internship, they must disclose the information relevant to their disability in order that such measures can be put in place.

Accordingly, students must receive assistance from their college while the preparatory steps for the internship are being made, and properly understand the aptitudes required to perform the duties in question. It is essential that this assistance be maintained throughout the internship, so that the student learning can be monitored. The college must therefore be in regular contact with the internship environment; of this, the Commission suggested that colleges develop mechanisms to prevent the right to equality from being violated.

The collaborative liaisons between colleges and internship environments must not, however, lead to the disclosure of confidential information on the health status of the student, unless the latter so consents. Furthermore, colleges cannot oblige students to do so, as this would infringe on their right to privacy.

Similarly, colleges cannot send such information to a professional body requesting it. Professional bodies are not authorized to solicit this type of information directly from a student while he or she is still in college, even if the student may well become a member at some point in the future. Such a request would violate the student’s right to privacy, and no specific provision of the *Professional Code* authorizes a professional body to act in this manner.

Professional bodies have the same obligations as regards the right to equality as internship environments. According to section 17 of the *Charter*, “No one may practise discrimination



in respect of the admission, enjoyment of benefits, suspension or expulsion of a person to, of or from an association of employers or employees or any professional order or association of persons carrying on the same occupation”.

Learning Assessment, Academic Success and Certification of Studies

One of the essential principles of the *Accueil et intégration des personnes handicapées au collégial* program is based on the responsibility of the individual student for making appropriate choices to ensure a positive outcome. Without casting doubt on this principle, which seems completely legitimate in the context of colleges' mission, the Commission felt that care must nevertheless be taken to ensure that disabled students' right to equal treatment is upheld.

In the view of the Commission, individualized education plans will be difficult to implement without MELS support.

The Commission recognized that, although maintaining skills-development performance criteria is necessary to preserve the credibility of the certification process, accommodation measures must be established for disabled students as regards learning and learning assessment. Assessment standards must be as inclusive as possible and not disproportionately compromise disabled students' chances for success and graduation.

Although most college staff agree unreservedly on the establishment of accommodation measures that promote learning, several are more dubious about whether such measures should apply to assessment. However, this is the very essence of the right of equality as regards academic success. Colleges must ensure that accommodation measures are maintained during assessments; however, these measures are subject to adjustment, so as to take account of the assessment context and requirements. If an educational institution were actually to oppose maintaining accommodation measures during student evaluations, it would have to demonstrate that this would constitute an undue hardship.

Lastly, an examination of institutional policies on the evaluation of student achievement and program evaluation shows that colleges have not yet incorporated specific measures or objectives aimed at disabled students. To give this clientèle an equal chance to succeed and aspire to a college education, the Commission deemed that such measures and objectives should be joined into these policies and planning exercises.

CONCLUSION

The increasingly noticeable presence of disabled students in public and private educational institutions, far from being an anomaly, means various practices need to be re-examined to ensure that these institutions can maintain their ability to meet their obligation to accommodate all disabled students. This situation also draws attention to the fact that the main policies, programs and legislation surrounding the delivery of special-needs services—designed, for the most part, in the 1990s—directly or indirectly exclude “emerging” disabilities. As a result, these students are victims of what the Commission considers systemic discrimination.

Armed with such observations, the Commission formulated a number of recommendations aimed at the MELS, the Fédération des cégeps, the ACPQ, central labour bodies operating in colleges and other authorities whose action could have an effect on the services provided to disabled students. The purpose of the recommendations drafted by the Commission is, not only to optimize prevailing college accommodation practices for all disabled students, but also to put an end to the discriminatory treatment suffered by students with an “emerging” disability. These recommendations can be found in the opinion made public by the Commission in the spring of 2012,⁵ and can be consulted on its Website [www.cdpdj.qc.ca]. (TR: In French only.)

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Daniel DUCHARME (Ph.D., in Sociology) is a researcher with the Commission des droits de la personne et des droits de la jeunesse. His research analyzes the social and structural context in which human rights and freedoms are exercised, especially in the areas of the right to education and health.

daniel.ducharme@cdpdj.qc.ca

Karina MONTMINY (L.L. B, D.E.A.) is legal counsel with the Commission des droits de la personne et des droits de la jeunesse. She works on several discrimination-related matters, specifically those related to disabilities requiring reasonable accommodation.

karina.montminy@cdpdj.qc.ca

⁵ COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE. (2012). *L'Accommodement des étudiants et étudiantes en situation de handicap dans les établissements d'enseignement collégial*. Montreal, cat. 2.120-12.58.