



Needs-based Model Failing Students May Be a Violation of Students' Human Rights

by STEVE BROOKS

Jeffrey Moore was a student of the North Vancouver School District. He was diagnosed with a severe learning disability and required intensive supports to learn to read. For the first couple of years of his education, he did indeed receive a range of supports. However, due to budget cuts by the Province of British Columbia, Jeffrey's parents were advised that the intensive remediation he required could not be provided by the school. As a result, the Moore's elected to enroll their son, at their own expense, in private school where the remedial supports could be offered. The Moore family filed a complaint with the Human Rights Commission arguing that Jeffrey had a right to educational accommodations. The case eventually found its way to the Supreme Court of Canada.

On November 9, 2012, the Supreme Court of Canada handed down a landmark decision on disability rights. According to the Court, students with disabilities are entitled to receive the accommodation measures they need to access and benefit from the service of public education. The Court went on to further explain that adequate special education supports are not "a dispensable luxury," but a "ramp that provides access to the statutory commitment to education made to all children in British Columbia."

The key question put before the Court was whether program accommodations and supports are special education or general public education? According to the Court, they are general education. Special education is the means by which students like Jeffrey get meaningful access to general public education available to all students. Students with learning disabilities need to be accommodated so that they can benefit from educational services. It is not an extra service, but rather what is required for some students to benefit equally from the education system. The Court went on to indicate that the accommodations must be adequate to ensure meaningful access.

Currently in this province, the accommodations for students with special needs are addressed through what is called the "needs-based" model. Many parents and even experienced educators are confused by this model description, since it implies that as needs arise, services will be provided. This, however, is not the case; what the "needs-based" model expects is that as new needs arise in a school the allocations of supports to the school be re-deployed on a "needs basis." This means that as new needs arise in a school, a review of how supports are deployed is conducted and a decision is made to re-deploy supports to address the greatest needs. As this is a zero sum budget exercise, it means that some students who were identified as needing supports lose them so that other students whose needs are assessed as being greater receive the supports. Very simply speaking, the system we now have requires that students with special needs are compared with other students with needs, creating winners and losers.

It is important to note that the Supreme Court categorically stated in the Moore case that it was inappropriate to only compare the needs of special needs students with other special needs students. In such a scenario Government would be free to cut programs for all persons with disabilities without being held accountable and "risks perpetuating the very disadvantage and exclusion from mainstream society the [human rights] Code is intended to remedy."

When one considers Government's current "needs-based" model for addressing the needs of students with exceptionalities in light of the Jeffrey Moore case and the Supreme Court ruling, it seems our Provincial Government is not living up to its human rights obligation to provide to students the required accommodations they need to fully participate in the public education system, leaving one to question how many Jeffrey Moores we have in this province?

Steve Brooks is Executive Director of the NLTA.