

**Access to An Education for
Diverse Learners
SD 83 - November 2020**

What is the standard?
How are we doing?

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Inclusion BC Handbook

"The following [court] cases have clear implications for school boards ... to recognize the needs of students with disabilities and providing reasonable accommodation of those needs."

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The UN Convention on the Rights of Persons with Disabilities (CRPD)
Ratified by Canada in 2010

Article 24: Inclusive Education
Parties recognize the right of persons with disabilities to education that ...

- Has reasonable accommodation
- **Receives the educational support required**
- [Access to] Environments that maximize academic and social development

➤ What educational supports are required for each designated student?

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Constitution Act 1982

EQUALITY RIGHTS

- 15. (1) Every individual is equal before and under the law and has the right to ... equal benefit of the law without discrimination based on ... mental or physical disability.

➤ Are all children participating in school activities?

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BC Supreme Court-Hewko 2005

- This lawsuit was won in BC and never appealed. The BC Supreme Court ruled that the Abbotsford School District breached its statutory duty to meaningfully consult. As a result of Hewko, there are three main parent/child rights:
 - The right to consult. This means that the parents cannot simply be "told", but have a right to participate fully in their child's education. They also have the right to be consulted prior to an aide being assigned.
 - The right to review files. Parents can view all student records (unless it's a protection/abuse case) and request copies. The Freedom of Information and Protection of Privacy will apply.
 - The aide must have "instructional control" over the child. This is not the same as "functional control". There is a difference between thriving and surviving.

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Legal Challenges

Eaton v. Brant County Board of Education, [1997]

- school boards have a duty to recognize the individual and actual needs of students with disabilities

Eldridge v. British Columbia (Attorney General), [1997]

- governments have a duty to ensure that members of disadvantaged groups benefit equally from services offered to the general public.

➤ How is the School District assessing the individual needs of the students with disabilities? Frequency of SLP? OT?

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Supreme Court Canada vs Moore

- A third lawsuit, *Moore 2005*, was brought forward by parents of a child with dyslexia when the Vancouver school district cancelled a special program that had allowed children with dyslexia to learn. The case was won in the Supreme Court of Canada in 2014. The judges found that
 - North Vancouver did not accommodate the needs of a student with dyslexia
 - a finding of "discrimination was made based on the insufficiently intensive remediation provided by the District for Jeffery's learning disability, in order for him to get access to education that he was entitled to
 - Jeffery's dyslexia program was a "ramp that provides access to the statutory commitment to education made to all children in BC"

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Hewko Lawsuit, 2006

B.C. Supreme Court Rules that School Districts have to Hire Aides with Child-Specific Training for Autistic Students

- Madam Justice Koenigsberg ruled that the School District breached its duty when it repeatedly failed to provide a classroom aide who was capable of demonstrating instructional control of a student with autism, Darren Hewko.

➤ What is the school district doing to ensure a classroom aide is provided, one who has instructional control?

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BC Human Rights Tribunal

- A special needs child was denied access to educational services
- Complaints to the Human Rights Tribunal are being decided in favour of the students and their right to an education

➤ Does the special needs child have access to needed school district services and specialist?

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Other Rulings

- Needs of the child take precedent over union seniority
- Students have a right to access trained ABA educators
- Nine justices of the Supreme Court of Canada ruled that disabled students are entitled to equal opportunity to access public education as students without learning disabilities.

➤ Are the needs of the child taking precedent over union seniority?

➤ Do students have access to a trained ABA educators?

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Civil Suit SD 83 vs Student - 2016

- <https://globalnews.ca/news/2714839/salmon-arm-family-suing-school-district-83/>

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