

LEARNING DISABILITIES ASSOCIATION OF BC
SOUTH VANCOUVER ISLAND CHAPTER



know your rights

GUARDIAN EDITION

*A Handbook for Parents/Guardians
of Children with Learning Disabilities
and/or Attention Deficit Disorder*

generously funded by

THE  LAW
FOUNDATION
OF BRITISH COLUMBIA

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Generously Funded by the
Law Foundation of British Columbia

Produced by the Learning Disabilities
Association of British Columbia,
South Vancouver Island Chapter

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**LEARNING DISABILITIES
ASSOCIATION OF BC –
SOUTH VANCOUVER ISLAND CHAPTER**

The LDABC–SVI is a not for profit organization that educates, supports, and advocates for children and youth with Learning Disabilities and/or Attention Deficit Disorder and their families.

We are located at:

1524 Fort Street,
Victoria, BC V8S 5J2
www.ldasvi.bc.ca



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Debbie Cybulski is the Executive Director of the LDA-SVI in Victoria. Debbie was the project manager for *Know Your Rights* and assisted with all phases of writing and production.

Cathie Camley is the mother of three children. Two of her children have LD, one also has AD/HD. Cathie is a tireless advocate for children with LD and currently sits on the LDA-BC Education Committee. Cathie was the principle writer of the first edition of *Know Your Rights* and graciously provided her editing expertise when needed.

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you are the
most important advocate
for **your child.**



KNOW YOUR RIGHTS is a project of the Learning Disabilities Association of British Columbia, South Vancouver Island Chapter (LDA-SVI). It was funded by the Law Foundation of British Columbia.

Check us out on-line at

www.knowyourrights.ca

introduction

The purpose of this booklet is to provide parents of children with Learning Disabilities (LD) and/or Attention Deficit Disorder (AD/HD), with information that will help them to be effective advocates for their child.

Parenting a child with exceptional abilities means that you have become an exceptional parent, acquiring a set of skills and a knowledge base that most guardians will not require.

Finding the appropriate resources to support your child's needs requires an understanding of your child's learning needs, knowledge of the policies and processes that govern their education and effective communication skills.

One of the most challenging aspects of advocating for your child is to understand and negotiate the complex maze of special education regulations, policies, and laws that control how your child's educational programs and services are delivered over his/her thirteen years of education. You are the most important advocate for your child. Advocating can be a difficult task if you don't have a clear understanding about what s/he is entitled to or how to access it.

Know Your Rights has been researched and written to help you with this important task. We hope you will make use of the information in this booklet to support your on-going advocacy efforts and to make sure your child receives the best education possible.

the facts on LD & AD/HD

Learning Disabilities

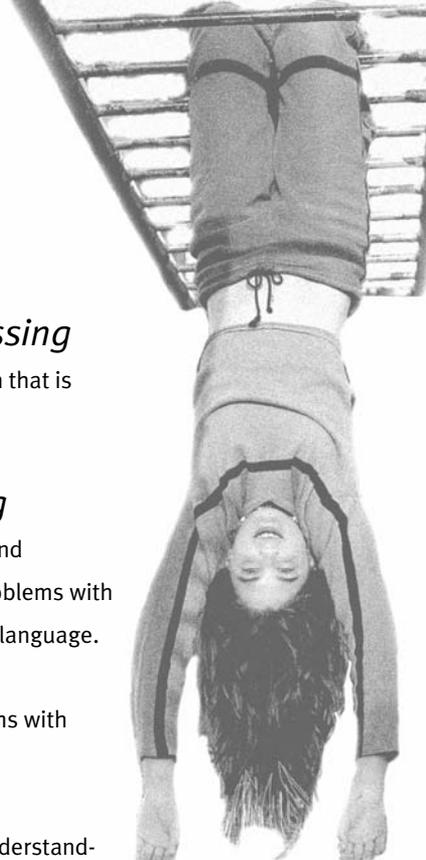
A Learning Disability is a neurologically-based, hereditary condition that affects a person's ability to learn in "typical" ways. There is a marked difference between what a person with a Learning Disability should achieve and what he or she actually achieves.

As our knowledge and understanding of learning disorders change, so do the definitions policy makers use. It is more important to understand how an individual is impacted by their disability and how we can help them.



Common Characteristics

Learning Disabilities vary considerably in their expression, severity, and impact. Learning Disabilities encompass a cluster of disorders, and no one individual will display all of them. For example, some people with LD have a math difficulty, whereas others excel in math but struggle with reading. Difficulties may also affect learning in different ways at different age levels. For example, an underlying language disorder may appear as a delayed speech problem in the preschooler, as a reading disorder in the elementary student, and as a writing disorder in the secondary student.



Some common characteristics of LD include:

Perceptual and information processing problems: difficulty with processing information that is presented either in a visual or auditory manner.

Language and auditory processing problems: difficulty with processing language and information presented verbally. These can include problems with listening, speaking, vocabulary, and in other areas of language.

Written language difficulties: problems with spelling, handwriting, and/or written composition.

Mathematics difficulties: difficulty in understanding or thinking in quantities, problems understanding time and/or space concepts, and recalling and/or using number facts.

Disorders of Attention: hyperactivity, distractibility, poor concentration, short attention span (see the definition for Attention Deficit Disorders).

Failure to develop and use strategies for learning: lack of organizational skills, inactive learning style, and a lack of self-awareness about how one learns.

Poor motor abilities: poor fine and/or gross motor coordination, general awkwardness and clumsiness, spatial problems.

Social skills difficulties: problems in social perception, understanding or “keeping up” with social communication, emotional behaviour, and/or establishing and keeping reciprocal social relationships.

Specific Learning Disabilities include:

- *Dyslexia*: a problem with processing language in its many forms, typically expressed in a difficulty with reading;
- *Dysgraphia*: a problem with the writing; and,
- *Dyscalculia*: a problem with math concepts and calculation.

*The terms for Specific LD are rarely used in the public school system because they represent a kind of medical term for what many specialists say is essentially an educational problem. Specific Learning Disability terms are more widely used in the area of medicine and psychology. Again, regardless of the terminology used, it is important to know how the disability presents itself and affects each individual child.

How common are Learning Disabilities?

Ten percent of the population has a Learning Disability. About 20% of children with LD also have a related anxiety disorder and about 30% also have Attention Deficit Disorder.



Assessment of LD and What It Means

Usually, testing begins with observing the student in the classroom. This may be done by the regular classroom teacher or a specialist teacher. In some situations, your child may be given achievement tests. These tests measure how well your child is doing academically when compared to his or her same-age peers. Children with LD typically score lower in one or more academic areas or have very uneven test results across a range of areas.

Once your child has been referred for formal psycho-educational testing, you will be asked to provide some historical details about your child, (e.g., did he or she hit the usual milestones at typical ages?; does anyone else in the family have a diagnosis of a learning problem?; etc.).

Your child should then see the school psychologist for more in-depth testing. An intelligence test is given to determine your child's estimated learning potential. Once that is established, an achievement test is given. Scores from both sets of tests are compared. Individuals with LD will

show a discrepancy between their estimated learning potential and their actual performance as measured by these tests. Other tests may also be given. These additional tests are designed to identify and measure specific problem areas.

Once the tests are completed, a report is written that includes the test scores, an interpretation of the tests and scores, and recommendations. You should be invited to a meeting where the person who performed the assessment can discuss their findings and recommendations with you. You should also receive a copy of the report for your files.

This can be a very challenging time for many parents as there is a lot of information to take in. It is important for you to understand what the report says about your child as a learner and how to support him/her. Ask the person completing the assessment if it is possible for you to contact him/her if you have further questions.

Attention Deficit Disorder

Although the exact cause of AD/HD is not known, biological and genetic factors are thought to play a role.

Attention Deficit Disorder is typically characterized by persistent difficulty in three areas (although all three do not have to be present):

Attention span, Impulse control, and, Hyperactivity.

It is important to remember that all children are developing their abilities to pay attention and develop self control over impulsive behavior. Children also learn through activity and demonstrate

varying degrees of physical activity.

A child who persistently demonstrates a short attention span, forgetfulness, distractibility, reluctance to do tasks that require sustained mental effort, makes careless mistakes, loses items, fails to finish tasks, or has difficulty following instructions may have AD/HD. When these behaviors consistently affect a child's ability to learn, follow instructions or develop healthy relationships, it is important to look at AD/HD as a possible cause.



Diagnosis of AD/HD and What It Means

Typically, AD/HD first becomes noticeable between the ages of 3 and 7, however it may not be diagnosed until the child enters school. Diagnosis usually involves a complete physical/medical check-up, including an assessment of the child's developmental and behavioral history, and an assessment of symptoms in three areas: inattention, hyper-activity and impulsivity. A child must display a number of these symptoms over a minimum of six months. The symptoms must also be expressed in a way that is inconsistent with typical child development.

This is a very simplistic overview of the diagnostic process. It is important to remember that a diagnosis of AD/HD tells us that a child has the symptoms and that it is impacting his/her life. It does not tell us the exact cause or identify an "easy fix" solution. If a child has problems with learning, it may also be important to have other assessments completed that could possibly identify other issues that could lead to or contribute to AD/HD symptoms. Many children with AD/HD have learning disabilities.

There are many strategies and approaches to AD/HD treatment. It is important to learn about your child's experience and find solutions that work for him/her.

How Common is AD/HD?

Between three to five percent of school aged children have AD/HD. Statistics show that ten to 33 percent of students with AD/HD also have LD. Most children with AD/HD are boys – outnumbering girls three to one. About one third of all children with AD/HD will also have another related condition.

Related Conditions

It is very common for people with LD and/or AD/HD to have additional conditions. These can include:

- *Oppositional Defiant Disorder*
- *Conduct Disorder*
- *Mood Disorders*
- *Anxiety Disorders*
- *Tourette Syndrome*
- *Obsessive Compulsive Disorder*
- *Sleep Disorders*
- *Eating Disorders*

laws and policies governing education

Understanding your child's rights and entitlements is critically important towards ensuring he or she receives an appropriate education. From the Canadian Charter of Rights and Freedoms to local school district policies, your child's rights are layered in laws and policies at many different levels.

These laws provide the education system with a framework to guide policy development and ultimately, the delivery of education in BC.

This section will outline laws that are relevant to the rights of children with learning disabilities in the public education system within BC.



Canadian Federal Laws

The Canadian Charter of Rights and Freedoms

The Canadian Charter of Rights and Freedoms can be found on line at:
<http://laws.justice.gc.ca/en/charter/index.html>

The Canadian Charter of Rights and Freedoms is an important law because all other laws and policies must be consistent with the provisions found within the charter.

You child's right to equitably access a public education begins with Section 15(1) of the Charter. It states:

“Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”

This section of the Charter makes it clear that every individual in Canada is considered equal. This means that government cannot discriminate in its laws or programs, including the provision of a public education. A child with a learning disability cannot be denied opportunities available to their non-disabled peers.

The Charter recognizes that equal doesn't always mean the same for everyone. The Charter allows for certain laws or programs that favour disadvantaged individuals or groups. For example, programs aimed at supporting the unique learning style of a student with learning disabilities are recognized as equitable under the Charter.

BC Provincial Laws

The BC Human Rights Code

The BC Human Rights Code can be found on line at:

http://www.qp.gov.bc.ca/statreg/stat/H/96210_01.htm

The BC Human Rights Code also recognizes that people with disabilities can face discrimination. A child's right to access educational accommodations, facilities and services are covered in Section 8 (1) of the Code.

8 (1) A person must not, without a bona fide and reasonable justification,

(a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or
(b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex or sexual orientation of that person or class of persons."



BC School Act

The BC School Act can be found on line at:
http://www.qp.gov.bc.ca/statreg/stat/S/96412_00.htm

The most comprehensive Act that governs education in BC is the BC School Act. Student and parent rights are outlined in this piece of legislation. We have highlighted the most relevant pieces.

School Act: Sections of Particular Relevance

The Right to Access Education

(School Act, Part 2, Division 1, Sections 2.1, 2.2)

Children can access a school education program when they are of school age and are a resident of that school district. If the child is not a resident of the school district, they may still attend a program if the board of the school district determines that space and facilities are available.

The Right to be Informed

(School Act, Part 2, Division 2, Section 7.1 (a))

You have the right to be informed about your child's attendance, behavior and progress in school.

The Right to Receive Information

(School Act, Part 2, Division 2, Section 7.1(b))

You may request and be given a copy of the school plan and the accountability contract for your school district.

The Right to Participate

(School Act, Part 2, Division 2, Section 7.1 (c))

You have the right to belong to a Parent Advisory Council if one is established at your child's school.



The Right to Consultation

(School Act, Part 2, Division 1, Section 7.2 and Section 4)

You may, and at the request of a teacher, principal, vice principal or director of instruction, consult with your child's teacher(s), principal, vice principal or director of instruction with respect to your child's educational program. Your child is also entitled to consult with his or her teacher(s), principal, vice principal or director of instruction about their educational program.

The Right to Examine Records

(School Act, Division 3, Section 9.1)

You and your child may, upon request, and while accompanied by the principal or a person designated by the principal to interpret the records, examine all of your child's records. You may also receive a copy, with or without a fee, of any of your child's records.

The Right to Appeal

(School Act Division 3, Section 11)

Every school district must establish an appeal procedure. You have the right to appeal a school board employee's decision or lack of decision which significantly affects the education, health or safety of your child. The appeal must be made within a reasonable time from the date you were informed of the decision.

You may be directed to discuss the appeal with one or more persons before the appeal is heard by the school board. The board may refuse to hear the appeal if you do not comply. Appeal decisions made by the board must be made as soon as practical after receiving the appeal and the decision promptly reported to you. Decisions of the board are final.

The Right to Confidentiality of Student Records

(School Act, Division 2, Section 79.1)

A board must establish written procedures regarding the storage, retrieval and appropriate use of student records. Such a procedure must ensure the confidentiality of the information in your child records and ensure the privacy of your child and your family. ➤

*Education (Learning Enhancement)
Statutes Amendment Act, 2006
(Bill 33 – 2006)*

The full Education Statutes Act
can be found at:
www.legis.gov.bc.ca

This Act amends the School Act and
deals in part with limits to class size
and how classes are composed. With
regard to class composition, a school
board must ensure that any class in
any school in its district does not have
more than 3 students with an
individual education plan unless: in
the opinions of the superintendent

and the principal of the school, the
organization of the class is appropri-
ate for student learning, and the
principal of the school has consulted
with the teacher of that class. Gifted
students are not counted as students
with IEPs for the purposes of
composing classes.



BC Ministry of Education: Policies & Procedures

The Role of the Ministry of Education:

The Ministry's role is to:

- develop guidelines;
- develop policies;
- provide the funding for special education; and
- audit the districts' programs and services to ensure they are complying with ministry criteria for reporting special needs students. Not every category of special education is audited every year in each district. Certain categories are selected and the auditors check to see that students who are designated have appropriate documentation, assessment information and services provided. They **DO NOT** evaluate the quality, quantity, or appropriateness of those services.

Ministry of Education: Policies of Relevance

Ministry of Education policies governing special education in BC can be found in Special Education Services: A Manual of Policies, Procedures and Guidelines (see appendix). Procedures provide educators with guidelines on how to implement ministry policy and help to ensure that laws are followed. All of the BC Ministry of Education policies can be found at: www.bced.bc.ca/ and at www.bced.gov.bc.ca/policy/policies/ and www.bced.gov.bc.ca/legislation/schoollaw/

Policy on Diversity in BC Schools – A Framework

This policy can be read in full on line at: www.bced.gov.bc.ca/policy/

The school system strives to ensure that differences among learners do not impede their participation in school, their mastery of learning outcomes, or their ability to become contributing members of society.

The school system strives to create and maintain conditions that foster success for all students and that promote fair and equitable treatment for all. These conditions include:

- Equitable access to and equitable participation in quality education for all students.
- School cultures that value diversity and respond to the diverse social and cultural needs of the communities they serve.
- School cultures that promote understanding of others and respect for all.
- Learning and working environments that are safe and welcoming, free from discrimina-

tion, harassment and violence.

- Decision making processes that give a voice to all members of the school community.
- Policies and practices that promote fair and equitable treatment.

Policy Regarding Eligibility for Special Education Services

Ministry of Education, Special Education Services: A Manual of Policies, Procedures and Guidelines can be found on line at www.bced.bc.ca/

The Ministry of Education's definition of students with special needs includes students who have "*learning disabilities, a disability of an intellectual, physical, sensory, emotional or behavioural nature, or have exceptional gifts or talents.*"

AD/HD is not always considered a special need under this definition, but can be in certain circumstances.

In order to be eligible for special education programs and services,

your child must meet certain diagnostic criteria (see page 4). All students generate funding for the school district. Some students may be eligible for supplemental funding. Various funding formulas have been used and are subject to change. While understanding the funding system can be helpful, it is more important to understand HOW your child is affected by their learning disability, and what you as parents, and his or her teachers, can do to support your child in their learning.

Policy on Special Needs:

Special Education Policies can be found on line at: www.bced.gov.bc.ca/policy/policies/funding_special_needs.htm

The following policies (1 through 3) apply to students who have been reported to the Ministry of Education as students with special needs.

1. The Placement of Students with Special Needs:

The school board must ensure that a principal offers to consult with you

about your child's placement in an educational program. The school board must provide your child with an educational program in a classroom where he or she is integrated with other students who do not have special needs, unless the educational needs of your child, or of other students, indicate that the educational program for your child should be provided otherwise.

2. Planning for Students with Special Needs:

(Individual Education Plans, IEPs)

This policy can be found on line at:

www.bced.gov.bc.ca/policy/

The school board must ensure that an IEP is designed for your child as soon as practical after the board identifies your child as having special needs, unless

- your child requires little or no adaptations to materials, instruction or assessment methods,
- the expected learning outcomes have not been modified, and
- your child requires 25 or fewer hours of remedial instruction by someone other than his or her classroom teacher, in a school year.



The school board must ensure that your child's IEP is reviewed at least once each school year, and where necessary, is revised or cancelled. You, and where appropriate your child, are to be given the opportunity to be consulted about the preparation of the IEP. Your child must be offered learning activities in accordance with the IEP designed for him or her.

3. Reporting for Students with Special Needs:

This policy can be found on line at: www.bced.gov.bc.ca/policy/

Where your child's program is modified, that is if your child is unable to demonstrate his or her learning in relation to expected learning outcomes set out in the curriculum for the course or subject and grade, his or her progress report(s) must contain written comments describing:

- what your child is able to do;
- the areas in which your child requires further attention or development; and
- the ways of supporting your child in his or her learning.

The report described above must contain a statement that the progress your child makes is in relation to the

expected learning outcomes set out in his or her IEP (a modified program). It should not be in relation to the expected learning outcomes set out in the curriculum for the course or subject and grade. Where appropriate, written comments should describe ways to enable your child to demonstrate his or her learning in relation to expected learning outcomes set out in the curriculum for the course or subject and grade, and should describe the time period required to enable the student to demonstrate such learning.

A letter grade (the typical manner for reporting student progress in grades 4 through 12) may only be assigned for your child where he or she is able to demonstrate his or her learning in relation to expected learning outcomes set out in the curriculum for the course or subject and grade.

Where a professional support person other than the classroom teacher is responsible for providing some portion of your child's educational program, that person should provide written reports on your child's progress for inclusion with the report of the classroom teacher.

Policy Regarding Adjudication:

This policy can be found on line at:
www.bced.gov.bc.ca/policy/

Some students are unable to write their Provincial examinations under normal circumstances because of their special needs. Currently, Provincial exams are written for specific subjects from Grade 10 through Grade 12. The adjudication process is designed to adapt Provincial exam conditions. The content of the exam is not modified, but eligible students may be allowed extra time, receive a different exam format, or use an alternative means of recording their answers to exam questions.

To be eligible, your child's principal must submit a request form with the appropriate supporting documentation by a specific date to the Board of Examiners for their approval. Each request is reviewed individually. If you believe your child is eligible to receive these adaptations, speak with the Principal early in the school year to make sure your child will receive this support when it is time to write the exams.

Currently, all students writing provincial exams have one hour of extra time on provincial exams and may also use a computer (without spellchecker or grammar check) on provincial exams without adjudication.

Policy Regarding Suspension:

Information regarding suspensions can be found on line in the School Act at: **www.qp.gov.bc.ca/statreg/stat/S/96412_00.htm**

The School Board authorizes the principal of any school in the district to suspend a student from attendance at school for five days or fewer and to remove a suspension that he/she has imposed. Students under the age of 16, who are suspended from school, must be provided with an educational program.

Policy for Special Needs Funding:

This policy can be found on line at:
www.bced.gov.bc.ca/policy/

Your child with special needs may require additional support and accommodations to enable them to access and participate in educational programs. Currently, the Basic Allocation, a standard amount of money provided per school age student enrolled in a school district, includes funds to support the learning needs of students who are identified as having learning disabilities, mild intellectual disabilities, students requiring moderate behaviour supports and students who are gifted.

It is important to recognize that it is the identified needs of your child that regulates the services he/she receives – not the funding generated by their diagnosis.

Ministry of Education Policy Regarding Special Education Programs and Services:

Ministry of Education policy for special education is found in *Special Education Services: A Manual of Policies, Procedures and Guidelines*.

The Manual is found on line at:
<http://www.bced.bc.ca/>

1. Individual Education Plans (IEP):

The expression of a learning disability is unique to the individual and so requires an individual approach for planning how best to support their extra learning needs. With few exceptions, students who have been identified as having learning disabilities will require adaptations, accommodations and/or extra support services in order to be



successful learners. Some students may require modifications to some or all aspects of their learning outcomes. An Individual Education Plan (IEP) is used to document the nature of the interventions designed to support your child's learning for that school year. Students who have not been identified as having special needs, but who receive 25 hours or more of service in a school year, over and above the regular classroom, should also have an IEP.

Most students with learning disabilities will have an IEP developed for them. However, some students with a learning disability may not require one if:

- their learning needs require only minor adaptations to their educational materials, or instructional or assessment methods;
- their expected learning outcomes have not been modified; and
- they receive less than 25 hours remedial instruction in a school year provided by other than the classroom teacher.

If you believe your child should have an IEP but does not, consult your child's teacher or principal.

What is an IEP?

An IEP is a documented plan, developed for your child, that describes individualized goals, adaptations, where necessary modifications, the services to be provided, and includes measures for tracking of achievement. The development of the IEP is a collaborative effort shared with you, your child, (where appropriate), the school and, as necessary, school district personnel, and other ministries and/or community agencies.

What Does an IEP Contain?

Your child's IEP may be brief or very detailed depending on the complexity of his or her needs. The format for writing an IEP varies from district to district, and sometimes from school to school within a district, but are typically developed based on a set of goals and objectives established for individual students.

The Ministry of Education's policy states that an IEP should have one or more of the following:

- The goals set for that student for that school year where the goals are different from the learning outcomes set out in an applicable educational program guide (modified curriculum); ➤

- A list of the support services required to achieve the goals established for the students; and
- A list of the adaptations to educational materials, instructional strategies or assessment methods.

The Ministry further recommends that an IEP should also include the following:

- The present level of educational performance of the student;
- The setting where the educational program is to be provided;
- The names of all personnel who will be providing the educational program and the support services for the student during the school year;
- The period of time and process for review of the IEP; evidence of evaluation or review, which could include revisions made to the plan and the tracking of achievement in relation to goals; and
- Plans for the next transition point in the student's education (including transitions beyond school completion) and linkages to Graduation Portfolio during Grades 10-12.

You may wish to discuss the above items with the person who is developing your child's plan to have them included in your child's IEP. It is important that your child's IEP includes items that support your child's unique learning needs.

For students who follow modified programs, the Ministry recommends that goals be set at a high but attainable level to encourage parents, students and staff to hold high expectations. They also recommend that each goal should be accompanied by measurable objectives to enable a proper review and evaluation.

2. Learning Assistance:

The Learning Assistance program supports teachers with students who have mild to moderate difficulties with learning and adjustment. To be eligible for Learning Assistance, students do not need to be identified in one of the special education categories. Each school determines who is eligible for this service and how it will be offered. Learning Assistance programs can include remedial help; strategies for learning; consultation with classroom teachers; and some assessment of the student's learning needs and progress.

If your child has a mild or moderate Learning Disability, he or she may be eligible for a learning assistance program. For children with Severe Learning Disabilities, intervention, more intensive than learning assistance, is recommended.

3. Counseling Services:

School counseling services are available to students, families, educators and the community to support the intellectual development, human and social development, and career development of each student. Referral to counseling services can usually be provided through the school-based team.

4. School Psychology Services:

School psychology services are a district-based educational and mental health program. The services are designed to support students, school personnel and guardians in enhancing

a student's academic, behavioural and social skill development. School psychologists also perform assessment services to aid teachers in planning for students with special needs. Some services may be informal such as observing students and gathering information through interviews. Other assessment services may be formal, like psycho-educational assessments that include intelligence testing and achievement testing etc. These tests are used to identify students with Learning Disabilities.



5. Speech and Language

Services:

Speech-Language services are designed to support students whose education or social development is adversely affected by communication and language difficulties. Services may be provided directly to the student or indirectly by providing classroom teachers with information about how best to meet the needs of students. Access to speech-language services is by school-based team referral.

6. Physiotherapy:

Physiotherapy is a service provided to help students who have difficulties with physical movement. It is designed to promote the student's maximum independence in his or her home, school and community. Access to this service is usually based on school-based team referral.

7. Occupational Therapy:

Occupational therapy is a service which is designed to help students improve their performance in the areas of self-care, productivity and leisure when they have difficulty functioning in these areas in a school setting. Access to this service is usually based on school-based team referral.

8. Hospital and Homebound Education Services:

Hospital Education services are designed to enable students to continue their education while in hospital. Homebound education services are designed to enable students who are absent from school due to illness or related medical/psychiatric reasons to continue their education.

These services may or may not be available to your child. Please consult with your child's school principal to determine if your child may be eligible for these services.

School Districts: Education Program and Service Delivery

The role of school districts and school personnel can be found on line at:

www.qp.gov.bc.ca/statreg/stat/S/96412_03.htm#section15

School districts are responsible for making sure that special education services and programs are delivered to students who require them. They must also make sure that the programs and services available to all students and their parents are also available to you and your child. The district has a responsibility to:

- Describe and make public the services and programs they offer

and how to access them, the process they use to identify and plan for students with special needs, as well as how they determine the student's special education placement;

- Identify how information will be reported and how records will be kept for tracking Individual Education Plans (IEPs), identify how guardians and other professionals will be included in the identification, assessment, and planning, and how they will evaluate and report on your child's progress;



- Identify how they will plan, monitor, and evaluate their special education programs and services;
- Have a clear process for guardians to appeal a decision, or the lack of a decision that affects your child's health, education or safety;
- Provide a description of the kinds of specialized staff they employ in the district, including job descriptions and the necessary qualifications;
- Determine the kinds of services and programs necessary for meeting the needs of special needs students, secure the funding and staff needed to offer them, and make sure they are distributed fairly to all the schools in the district;
- Provide advice and assistance to help principals and teachers meet their responsibilities to exceptional students (they do this in part by planning professional development programs for staff and by providing advice and assistance for developing the district's special education policies and procedures);
- Involve community representatives of groups concerned with exceptional students in planning programs and in their evaluation.

The Roles of School District Personnel:

Principals:

The powers and duties of principals are set out in regulations under the School Act. They include the responsibility for the implementation of Individual Educational Plans (IEPs) and the placement and programming of students. Principals are to ensure that teachers receive the information they need to work with your child with special needs and that the school is organized to provide your child with some direct support. Principals are also responsible for seeing that the school-based team is functioning and for helping team members meet the special needs of students. They do this in part by assigning a case manager to your child. The case manager coordinates the development, writing, and implementation of your child's Individual Education Plan (IEP).

Teachers:

Teachers are responsible for designing, supervising and assessing the educational program for students in their class, including students with special needs. Where your child requires specialized instruction, this is most effective when it is done in consultation with the teacher, the resource personnel available, with you and with your child.

Teachers are key to implementing your child's individualized program. If your child receives specialized instruction, his or her teacher should meet with the school's specialist staff, with you, and where appropriate, your child, to discuss the program. Teachers should also adapt their teaching style, activities and curriculum to enable all of the students in their classroom to succeed.

Where your child's program involves specialized instruction by someone other than the classroom teacher, collaborative processes are required to make best use of the expertise of the specialists available to assist and to ensure a co-ordinated approach. In secondary schools, where several teachers may be involved in your child's program, coordinated planning is especially important.

Teacher Assistants (TAs) and Special Education Assistants (SEAs):

The School Act allows school board's to employ a person, other than a teacher, to assist a teacher to carry out their responsibilities. Assistants to teachers are known by a variety of names including Teacher Assistants (TAs) and Special Education Assistants (SEAs). TAs and SEAs work under the general supervision of a teacher or administrative officer.

Teacher assistants may assist in performing a range of activities from personal care to assisting the teacher with instruction. They may be responsible for helping one or several students in the classroom. However, teachers are expected to design programs for students with special needs, not teacher assistants. They also help gather information for reporting a student's progress, however they do not assess or report on student progress.

School District Policies for Special Education:

In some cases, school districts have developed their own policies for special education. These policies are in addition to, and must comply with, Ministry policies. Check with your local school board to see if your school district has its own policies for special education delivery.



frequently asked questions

I think my child might have a Learning Disability. What should I do?

Talk to your child's teacher. If you have noticed difficulties, it is highly likely that s/he has as well. Your child's teacher will be able to give you feedback and refer your child to the school-based team for assessment and this is very important. If your child has a Learning Disability, it is very important that the assessment occur in a timely fashion. Early identification and intervention are key to your child's success.

You will also want to get as educated about Learning Disabilities as you can. Call your local Learning Disabilities Association and find out what services they offer. Many LDA's have wonderful libraries with great resources available to borrow. Many also offer parent support groups or individual parent support to help you through what can be a difficult time.

My child has been diagnosed with a Learning Disability. Now what?

A copy of the assessment report should be shared with the school. Based on the recommendations contained in the report, an action plan for supporting your child's education will be developed. Such plans are usually detailed in an Individual Education Plan (IEP).

I don't think enough is being done to help my child. What can I do?

Begin by approaching your child's teacher with your concerns. If this fails to produce the change you are seeking, ask to present your concerns to the school-based team. If you are still not satisfied, speak to the principal (see "Appeals" on page 33).

My child was tested privately. Does the school have to comply with the recommendations contained in that report?

The short answer is no. Private assessors may recommend actions that the school is not able to provide such as full-time, one-on-one assistance. That does not mean, however, that the entire assessment can be set aside. An assessment of a Learning Disability by a qualified assessor using approved tests should be accepted by the school. The school may offer alternative support services. Before seeking outside assessment services, it may be helpful to speak with the principal or the school based team.

Why doesn't my child get letter grades on his report card?

Students whose programs are modified do not receive letter grades on their report cards. Instead, the Ministry of Education requires that students on modified programs be evaluated based on their progress towards achieving the goals in their Individual Education Plans (IEPs). But, written reports **MUST** be provided, so ensure you are receiving these. If you think your child should be on an adapted program rather than a modified program, speak with his/her teacher(s) immediately.



My child is leaving elementary school. What do I have to do to make sure that his next school is aware of his extra learning needs?

Students making the move from one level of their schooling to the next, or from school to post-secondary or the world of work, should have a transition plan in place. You should be invited to participate in the planning and your contribution should be valued and included in the plan. If this is not happening, approach your child's teacher first and then proceed to the principal if you are not satisfied.

Never assume that teachers have seen your child's IEP. Early in the school year is a good time to connect with your child's teacher(s) and ask if they have any questions regarding his/her IEP.

My child's teacher has suggested that my child not take a second language. Will this affect his ability to graduate?

Many students with LD struggle with language, including their first language, so often they will have difficulty learning a second one. Having a second language is not a requirement for high school graduation. However, it is an entrance requirement at some post-secondary institutions. It is best to check with the institution your child is interested in attending to find out about their entrance criteria. The important thing to remember is that you are the best advocate for your child so whenever you feel concerned about something that may affect his or her ability to proceed with education, get informed and act. Many students with LD are fully capable of learning a second language and many do. It is also critically important to include your child's wishes and views in the decision making process.

*My child is following
a modified program.
What credentials will
s/he receive upon
graduation?*

Students who follow the regular curriculum, even when accommodations are provided, receive a Dogwood Certificate upon successful completion of the courses that lead to graduation. Students who follow a modified curriculum receive a School Completion Certificate indicating that they have successfully completed all of the learning outcomes identified in their IEP. You want to be very sure that your child requires a modified program before you agree to it.

Many children with LD can master the regular curriculum and/or receive modifications in some courses but not all.

*If you have other
questions, please call
the Learning Disabilities
Association at:
(250) 370-9513*

*or visit the Know Your
Rights web-site at:
www.knowyourrights.ca*

appeals

Sometimes, in spite of everyone's best efforts, you may be dissatisfied with the services or lack thereof provided to your child with LD. **School districts are required to have a written appeal process for you to have your concerns addressed.** Generally, the procedure involves approaching the person who is immediately involved in the situation -- usually the classroom teacher. Sometimes, you may have to go to a higher level of authority to have your concerns heard and acted upon. The next level of authority is the principal. From there, if the situation is not resolved to your satisfaction, you will be directed to take your concerns to the Superintendent, or a person designated by the superintendent, for a hearing. This may be an assistant superintendent, or a district department head. From there, if still unresolved, the Board of Trustees will hear your final appeal¹.

The Chain of Command

Teacher ➤ **Principal** ➤ **Superintendent** ➤ **Board of Trustees**

¹ It is important that you do not miss anyone in the "chain of command" or your appeal will be denied.

Administrative Fairness

Schools MUST develop a written appeal procedure and make it available to guardians and students.

The appeal process should be consistent with fundamental justice and procedural fairness, including the following principles:

- The right to ask for and be given an opportunity to have your case heard;
- The right to reasonable notice of and adequate time to prepare for an appeal meeting;
- The right to present evidence and to hear all evidence presented;
- The right to be provided with explanations of any evidence presented;
- The right to obtain a copy of the minutes of the hearing and a copy of the final report²;
- The right to be assisted by others who may provide moral support, expertise, or legal counsel;
- The right to take notes during the hearing or be allowed to tape record the hearing;
- The right to receive upon request, the information will be provided to the person(s) hearing the complaint, sufficiently in advance of the hearing to allow you to properly prepare and respond;
- The right to have assistance not only from a lawyer or educator, but the right to have a lawyer or whoever you choose to speak on your behalf;

² You have the right to request that all that is said at the hearing be transcribed by a court reporter so that what is recorded is a verbatim transcription rather than a synopsis of what was said in the minutes. You may have to pay for this service.

- The right to request that an interpreter be available if English is not a your first language;
- The right to have your child present during the hearing and to have your child's views and wishes considered as part of the evidence;
- The right to secure for your child his or her own independent counsel or advocate to speak at the hearing;
- The right to engage an expert to give opinions or evidence on the position of the school board and whether that position will have the effect of satisfying your child's educational needs³;
- The right to know in advance the names of the people hearing your concerns and who will make the decision⁴;
- The right to request an adjournment or a postponement of the hearing in advance, at the outset or during the hearing if you feel you are not adequately prepared or if you feel you are faced with information not previously received, or received but with inadequate time to prepare a response. While you have the right to make the request, you are not necessarily entitled to have the hearing adjourned.

If you are involved in an appeal, ensure these principles of administrative fairness are being followed. **Know Your Rights!**

³The expert may be present during the hearing to give further opinion or evidence on the issue of what educational program will better secure your child's needs.

⁴ You have the right to make reasonable inquiries about these individuals to ensure there is no conflict of interest.

legal and other options

There are a number of legal and quasi-legal avenues guardians and students can utilize when trying to resolve their complaints. They include:

OMBUDSMAN'S ACT

The Ombudsman is an independent, impartial investigator of complaints concerning government administrative unfairness. The Ombudsman can, when appropriate, recommend changes to resolve the unfairness.

Section 7 of the *Ombudsman's Act* makes it applicable to schools and school boards.

The Ombudsman can receive complaints from individual guardians or groups of guardians but will not serve as their advocates. Generally, complaints to the Ombudsman should deal with delays, indifference, rudeness, negligence, arbitrariness, oppressive behaviour, arrogance and/or unlawfulness. The office has the discretion to decide which

complaints are investigated and which are not. Very often complaints are resolved at the intake level. If they are not, they can be passed along to one of the Ombudsman's investigators to determine if an investigation is warranted. The Ombudsman's Office can make recommendations to resolve administrative unfairness but they cannot order an authority to change its actions or decisions.

Guardians should consider the Office of the Ombudsman as a last resort. Persons filing a complaint are encouraged to first go through the school district's appeal process and complain to the Ombudsman only if this proves unsuccessful. A complaint form is available on the Ombudsman's web page at www.ombudsman.gov.bc.ca or by calling **1-800-567-3247**



FREEDOM OF INFORMATION, PROTECTION OF PRIVACY ACT

The purpose of this Act is to make public bodies more accountable to the public and to protect personal privacy by:

- Giving you the right to access public records;
- Giving you the right of access to, and a right to request correction of, personal information about yourself on public record;
- Specifying limited exceptions to the right of access;
- Preventing the unauthorized collection, use or disclosure of personal information by public bodies, and;
- Providing for an independent review of decisions made under this act.

Every BC school district has appointed a Freedom of Information, Protection of Privacy Officer. Your requests and concerns should be forwarded to that person.

THE BC HUMAN RIGHTS TRIBUNAL

Human Rights legislation is anti-discrimination legislation, that seeks to ensure the fair treatment of people accessing government-sponsored and public services. Specifically, the statute provides a right not to be discriminated against in the provision of goods, services, or facilities customarily available to the public. It can be argued that education is a “service or facility customarily available to the public” and, therefore, subject to protection under the BC Human Rights Code. While the BC Human Rights Code seems to guarantee the right to education, the content of that education is left largely up to school boards to decide.

The BC Human Rights Code also protects against discrimination based on race, colour, ancestry, place of ➤



origin, religion, marital and family status, physical and mental disability, sex, sexual orientation and age.

The Tribunal investigates complaints of discrimination by collecting information from people who feel they have experienced discrimination and the person or organization that is being “named”. The complaint process is neutral and free of charge. To file a complaint, contact the Tribunal at:

BC Human Rights Tribunal
1170-605 Robson Street
Vancouver, BC V8B 5J3

Tel: (604) 775-2000 or
toll free in BC 1-888-440-8844
Fax: (604) 775- 2020
Website: www.bchrt.bc.ca

THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

The *Charter* may be referred to in various hearings and in discussions with those making decisions about your child to support your child’s right to equal access to an education.

Section 7 of the Canadian Charter of Rights and Freedoms states,

“Everyone has the right to life, liberty and security of person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”

It can be argued that a right to education is fundamental to effectively exercising other *Charter* rights such as the right to vote, freedom of thought, belief, opinion, and expression. If a person is entitled the right to an education, then government authorities must facilitate access to the right (re: Public Service Employee Act [1987]).

In section 15 ,the equality section, the *Charter* provides that,

“every individual is equal before the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.”

Subsection (1) states,

“Subsection (1) does not preclude any law, programs or activity that has as its objective the amelioration

tion of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origins, colour, religion, sex, age, or mental or physical disability.”

It can be interpreted that s.15 (1) mandates that all Canadians equally benefit from the laws which facilitate the delivery of education to the public. This makes s.15 a very important tool for equity of educational opportunity.

Provision s.24(1) of the Charter reads, *“Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.”*

The Charter also declares in s.52(1), that, *“The Constitution of Canada is the supreme law of the land and any law that is inconsistent with it has no force or effect.”*

CIVIL LAWSUIT

A civil lawsuit involves suing a school board in court to enforce a right an individual has under the *School Act*, or to enforce any breach of one’s rights under the *Charter*. If you are considering a civil lawsuit, you should consult with a lawyer.

JUDICIAL REVIEW

A Judicial Review is another court process where the Supreme Court of British Columbia can be asked to review the decisions of the school board, (i.e., the appeal process, where it is felt the decision has been unfair). There are limited grounds on which the Court can interfere with a school board’s decision, however, if the Review is successful, the Court has the power to order new hearings or direct how the issue is to be resolved. The significant advantage, however, is that if a judicial decision is made, a precedent will be set which may be binding upon future similar situations. The disadvantages are the costs in hiring a lawyer, the length of time it can take to get to court and the possibility of paying the school board’s legal costs if the Review is unsuccessful. If a Judicial Review is to be considered you should consult with a lawyer.

what are the courts saying about the rights of students with LD?

This is an interesting time in the field of Learning Disabilities because the general public is becoming much more aware of the difficulties faced by those affected by LD. With growing public awareness, schools are being held to account for their statutory responsibilities to provide an appropriate education to students with LD. Naturally, it would be best if provincial governments, school boards, and schools themselves were to ensure the delivery of appropriate special education services, but this is not always the case. The result has been a number of recent court challenges that are shaping the future of special education service delivery. More recently, there have been a series of human rights complaints in British Columbia. For details of decisions made, please visit the Human Rights Tribunal website at: www.bchrt.bc.ca/decisions

- *The Issue of Integration*

in Eaton v. Brant County Board of Education
(Ontario Court of Appeal)

Emily Eaton was a 12 year-old with Cerebral Palsy, who, as a result had difficulty communicating, vision problems and was dependent on a wheelchair. After several years in an integrated setting, a committee of the School Board recommended that Emily's best interests would be better served in a special program that was partly segregated.

Emily's guardians appealed the decision to a Special Education Tribunal that upheld the original decision. Her parents took the matter to the Divisional Court which also upheld the decision. The Ontario Court of Appeal finally overturned the decision based on the principle that s. 15 of the Charter presumes the segregated placement of students is discriminatory and should not be resorted to unless the alternatives are proven inadequate.

The case was then appealed to the Supreme Court of Canada where it was held there should be no automatic "presumption of integration" for disabled students. Discrimination under s.15 requires that:

- a) an equality right is denied on the basis of a personal characteristics (such as a disability), and
- b) there is imposed a burden or disadvantage not imposed upon others or a withholding or limiting of access to benefits or advantages which are available to others.

Not all distinctions are discriminatory. Some distinctions between students can be made as long as they are not based on a general label, but on the actual needs of the person.

The court noted that while inclusion benefited most special needs children, it burdened others and that because disability is expressed in individuals uniquely, decisions about appropriate accommodations must also be flexible. A guardian's desire to have their child taught in an integrated setting was stated not to be determinative of what an appropriate placement or the best interests of the child might be.

- *The Issue of Appropriate Education*

in Concerned Parents for Children with Learning Disabilities Inc. v. Saskatchewan (Minister of Education) [1998] S.J. No. 566

The *Concerned Parents* case suggests that integration of students may not be justified based on the need for an appropriate education. The claimants wanted the school board to segregate children with Learning Disabilities in a comprehensive special education program similar to one called the Carlton Connection. The Carlton Connection was developed for a few LD students as an experimental program by the school board and was found to be successful. This decision dealt only with the issue of whether or not the claimants even had a legal basis to pursue the claim. The court found that they did have a potential claim.

The plaintiffs' claim was viable on the basis of an allegation of breach of a duty to accommodate the needs of children with Learning Disabilities within the public education system in accordance with the requirements of s. 15(1) of the *Charter* and the Supreme Court's decision in *Eldridge v. Government of BC (Attorney General)* [1997] 3 S.C.R. 624. The case was allowed to proceed to trial.

In *Eldridge*, it was held that BC hospitals and the Medical Services Commission had violated s. 15 of the *Charter* by not having translation services for deaf patients. This resulted in unequal treatment of patients and was found to be indirect discrimination. Both *Eldridge* and *Concerned Parents* involve disabled minorities seeking effective access to public services on an equal footing to others. Because of the decision in *Eldridge*, it should be expected that school boards provide all students with the means to effectively allow them equal access to an education.

In *Eaton*, it was stated that the best interests of the child are paramount. In *Concerned Parents* and *Eldridge*, the courts suggest that their best interests require children be provided with the means to equally access an education.

International Declarations

Canada has signed a number of international declarations that guarantee children the right to an education. *Article 13* of the *International Covenant on Economic, Social and Cultural Rights* recognizes the right of everyone to an education. This supersedes similar provisions within the *Universal Declaration of Human Rights* and the *Declaration of the Rights of the Child*. Such declarations provide no immediate remedy to those seeking redress, however, they are important to refer to in court and to remind school officials of their obligations.



community resources

YOUR LOCAL SCHOOL BOARD

Guardians seeking information about special education programs and services in their school District should contact their School Board to request a copy of the District's Policy for Special Education. School District policy is made in addition to Ministry policy. Typically it contains information about locally offered programs and services.

BC MINISTRY OF EDUCATION

Guardians may access Ministry policy through several sources. Ministry policy for special education is available in the manual, Special Education Services: A Manual of Policies, Procedures and Guidelines. Every school has a copy of this manual. Guardians may ask to see it, however, it is unlikely that you will be able to borrow it to read at home.

The manual is available on-line on the Ministry's web page at:

<http://www.gov.bc.ca/bced/>

Also available for viewing and downloading on the Ministry's web site are a variety of other documents and reports regarding special education. There are many excellent sources of information on the web, but be warned, many are from the United States and may not apply to BC schools.



**LEARNING DISABILITIES
ASSOCIATION OF CANADA**

You may also want to contact the LD Association. They have a great deal of information about LD, Attention Deficit Disorder and related conditions. They may also be able to provide you with information about possible approaches and solutions for resolving any concerns about your child's education.

To find the nearest chapter to you, contact:

**The Learning Disabilities
Association of Canada
(National Office)**
323 Chapel St.
Ottawa, Ontario K1N 7Z2
Call : (613) 238-5721
Fax : (613) 235-5391
Email : information@ldac-taac.ca
Website: www.ldac-taac.ca

**LAWYER REFERRAL SERVICE
CALL 1-800-663-1919 toll free**

The lawyer referral service can help you determine if your concern can be addressed through legal means, how long it may take and how much it may cost. You will be given a half-hour of consultation for a \$25 fee + tax (GST and PST).

AD/HD SUPPORT GROUPS

There are several support and advocacy groups for Attention Deficit Disorder. Contact the numbers below to see if they have a chapter in your community.

**CHAD/HD
Call: (604) 222-4043**

**ADDSA
Call: (604) 524-9183**

appendix

*Special Education Services:
A Manual of Policies, Procedures
and Guidelines (1985),*
Special Education Branch,
Ministry of Education,
Province of BC

*Making the Most of the Law:
Education and the Child with
Disabilities (1993),*
LD Association of Canada.

The Manual of School Law (1995),
Ministry of Education,
Province of British Columbia.

*Advocating for Your Child with LD
(1998),*
LD Association of Canada.

*Guardian Advocacy
Training Program Manual (1999),*
LD Association of BC,
Tri-Cities Chapter.

British Columbia School Act (1996),
Government of British Columbia.

*Inclusive Education:
A Guardian's Handbook (1993),*
British Columbia Association
for Community Living.

*Administrator's Guide to
Special Education (1996),*
Ministry of Education.

*Becoming an Effective Advocate
for Your Child (1997),*
Cathie Camley.

important contacts

You may find it helpful to keep a list of contacts for your advocacy efforts.

My Important Contacts

My child's school: _____

School board office: _____

The district's special education department: _____

School board chairperson: _____

School board trustee: _____

Psychologist: _____

Counselor: _____

Family physician: _____

Pediatrician: _____

Tutor: _____

Learning Disabilities Association: _____

District PAC/BCCPAC Advocate: _____

Attention Deficit Support Organization: _____

My other important contacts: _____

“know your rights” evaluation

We want this booklet to be as helpful and informative as it can be to guardians/parents who have children/youth with Learning Disabilities and/or Attention Deficit Disorder.

Please take the time to complete this survey and return it to us at the Learning Disabilities Association, 1524 Fort Street, Victoria BC, V8S 5J2 or fax it to us at: (250) 370-9421.

You may also complete the survey on-line at www.knowyourrights.ca

1. I found the information in this booklet to be:

extremely helpful very helpful helpful not very helpful

2. The booklet was:

easy to read somewhat challenging far too advanced

3. I would have liked to learn more about:



4. Out of 5, with five being the highest and 1 being the lowest, rate the quality and importance of each section.

Quality Importance

- | | | |
|-------|-------|---|
| _____ | _____ | Facts on LD and ADD |
| _____ | _____ | Federal and Provincial Laws |
| _____ | _____ | BC Ministry of Education: Education Policy |
| _____ | _____ | School Districts: Education Programs and Service Delivery |
| _____ | _____ | Special Education Programs and Services |
| _____ | _____ | Frequently Asked Questions |
| _____ | _____ | Appeals |
| _____ | _____ | Legal and Other Options |
| _____ | _____ | What are the Courts Saying about Students with LD? |
| _____ | _____ | Community Resources |
| _____ | _____ | Important Contacts |

5. Do you have any additional comments?



LEARNING DISABILITIES ASSOCIATION OF BC
SOUTH VANCOUVER ISLAND CHAPTER



know your rights

www.knowyourrights.ca

**LEARNING DISABILITIES
ASSOCIATION OF BC**
SOUTH VANCOUVER ISLAND CHAPTER

1524 Fort Street
Victoria, BC V8S 5J2
250.370.9513

www.ldasvi.bc.ca

