

Guide – Education Series

ARCH Disability Law Centre

Human Rights Education in Ontario

A general guide for students

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**DISCLAIMER: The information provided in these materials is not intended to be legal advice. Consult a lawyer or legal worker if you need legal advice on a specific matter. This information is current as of January 2019.*

Please note that the information in this Guide does not apply to all situations. A person's accommodation needs may vary over time and at different points in the day. Always ask the person with the disability how to most appropriately accommodate them.

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Understanding your Rights as a Student

Students across Ontario have the right to free primary and secondary education regardless of who they are or where they come from. That is no less true for students with disabilities. However, students with disabilities often need accommodations and added protections to get an education. It can often be challenging for them to get what they need.

There are a number of ways that schools may fail to meet their legal obligation to educate students with disabilities. These include:

- Failing to provide appropriate accommodations
- Failing to provide an appropriate classroom placement
- Inappropriately disciplining a student

In light of these barriers, it is crucial that students understand their rights in the education system. The information contained in this booklet is meant to provide students with a basic understanding of some important laws that give them rights in the education system.

The laws that most affect students with disabilities are the *Education Act* and Ontario's *Human Rights Code*. This booklet will explain what each of these laws mean for students with disabilities in the education system.

What is the *Human Rights Code* and Why Does it Matter to Me?

The *Human Rights Code* ('Code') is a provincial law that protects students with disabilities from discrimination. It states that school boards must ensure that students with disabilities can access a meaningful education.

The *Code* also says that school boards must work to remove barriers which prevent students with disabilities from accessing an education. For example, if a student uses a wheelchair, the *Code* says that their classroom must be accessible to them.

The *Code* also says that school boards must provide “accommodations” to students. Accommodations are the supports that a student needs to get an education equal to that of their peers. Accommodations can include things like getting support from an educational assistant, getting school materials in alternate formats, or getting an iPad with apps that help a student learn. Proper accommodation can also mean that you get these supports in the regular classroom alongside your peers without disabilities. The duty to provide accommodation is very broad and requires school boards to accommodate you up to the point of ‘undue hardship’. That will be discussed in greater detail later in this Guide.

For more information about education and the *Code* you can visit:
<https://www.advocacyforinclusion.com/copy-of-video-01-introduction>

How is disability defined?

Disability is defined very broadly under the *Code*. This means that it gives students with all types of disabilities protection from discrimination and the right to accommodations. There is no set list of disabilities that the *Code* covers but it includes physical disabilities, mental health disabilities, and developmental disabilities. The *Code* even covers people who do not have a disability but are perceived to have a disability.

If you have questions about whether you are protected by the *Code* you should contact ARCH or another lawyer.

Who decides what my accommodations are?

No one person gets to decide what accommodations you are supposed to get. The law says that everyone involved in your education should consult with each other to figure out what the best accommodations should be. The law also says that everyone should cooperate as best they can when doing this – it should not be a fight between the school and families.

As part of the requirement that everyone cooperate, the law says that everyone has some basic responsibilities. For example, **school boards** have an obligation to talk with you and your parents/guardians about the type of accommodations and the type of placement that they think they should provide. School boards must:

- a. Take your views into consideration;
- b. Tell you and your parents about the accommodations and supports that are available;
- c. If you, the school and your parents agree that an assessment from a professional is needed to find the best accommodations, then the school board has to pay for that;
- d. Ensure that any information the school board has about your disability is shared only with people who need to know because they are helping with your accommodations;
- e. Limit their requests for information to only the type of information which is necessary to provide accommodations (e.g. they do not need to know your diagnosis); and
- f. Educate all faculty, staff and students about disability related issues.

Students and **parents** also have obligations too. These include:

- a. You must tell the school that you have a disability. If you know what you need as an accommodation at school you also need to tell the school about that;
- b. You may have to give them some of your medical information. Remember that you only have to give them what is **necessary** to create an accommodation plan for you; and
- c. Work with the school on an ongoing basis to ensure that accommodations are up to date.

Does my school have to give me any accommodation I want?

Schools must give you the accommodation that you need in order to get a meaningful education. They must provide these accommodations up to the point where it causes a school board “undue hardship”. Undue hardship is a legal term. It means that in some situations it may be really difficult to give a student a certain type of accommodation and because it is so difficult, they do not have to provide it.

It is very difficult for a school to say an accommodation is undue hardship. In order to claim that accommodating you would be too hard, school boards must prove that the accommodation would be very expensive or very risky to put in place.

The law only takes three things into account in figuring out whether something is undue hardship. These are:

- The **cost** of the accommodation;
- Outside **sources of funding** for an accommodation, if any; and
- Any **health and safety requirements** that would make providing the student the accommodation difficult.

No other reasons are considered undue hardship. For example, inconvenience is not considered to be undue hardship. Just because an accommodation is inconvenient does not mean that a school board does not have to put it in place.

If you are in a situation where a school is claiming it cannot accommodate you because it would cause them undue hardship, **you should contact ARCH or another lawyer for legal advice.**

What can I do if I believe my rights were violated?

If you believe that your rights have been violated or that you are not getting proper accommodations, you should seek legal advice from ARCH or another lawyer.

You can also apply to the Human Rights Tribunal of Ontario (HRTO) to complain about the violation of your rights. This is a formal legal process and it may include mediation and a hearing before an independent decision maker.

For more information see the HRTO's Applicant's Guide at <http://www.sjto.gov.on.ca/documents/hrto/Guides/Applicants%20Guide.html>

To learn more about the *Human Rights Code* as it applies to education, the Ontario Human Rights Commission has created a Policy on Accessible Education for Students with Disabilities. This can be accessed at: <http://ohrc.on.ca/en/policy-accessible-education-students-disabilities>

IPRC Meetings and IEPs

The Education Act

Now that we have covered some parts of the *Code*, this Guide will discuss the *Education Act*. The *Code* talks about many of the rights students have in the education system. The *Education Act* is more focused on how schools will try to deliver their services.

For example, the *Education Act* tells school boards how to identify students with disabilities and how to make placement decisions for them. Placement decisions are decisions about what type of classroom a student should be in. Students can be placed in a regular classroom, a classroom with just students with disabilities or some mix of the two.

The *Education Act* also says that students with disabilities should have a plan for their education. This is called an Individual Education Plan. These plans often record all of the accommodations a student should be receiving.

How are students identified and placed?

The *Education Act* says that school boards must take steps to identify students with disabilities and to provide them with the right placement. To do this, the *Education Act* says that school boards must set up an “Identification, Placement and Review Committee” (IPRC). This committee makes decisions about identifying a student with a disability and putting them in the right placement.

Students with a disability who need additional accommodation are identified as having an “exceptionality”. This just means that they have unique needs. There are five main categories of exceptionalities:

- Behaviour
- Communication
- Intellectual
- Physical
- Multiple (more than one exceptionality)

Once a student is identified, the Committee must figure out where a student should be placed within the school board. In most school boards, the Committee will place a student in either a “regular” classroom or a “segregated” classroom with only other students with disabilities. Sometimes the Committee will place a student in the regular classroom for some of the time and a segregated classroom for the rest of the time.

If you want to be in a regular classroom, it is really important that you go to the meeting of the Committee.

Rights of Students

Students over 16 have a number of rights during the IPRC meeting. These include:

- To be present at the meeting and tell the Committee what sort of placement they would like. The Committee must consider this request;
- To give or refuse consent for any medical assessments that the Committee might want a student to get;
- To get a copy of all of the information the Committee is using to make a placement decision. They should get this in advance;
- To present evidence to the Committee about why the placement they want would be best; and

- Students cannot appeal a decision by the Committee on their own, but they can ask that their parents do this.

Students under 16 should still be involved in decisions about their placement. They should be allowed to participate to the extent that this is possible.

Is an IPRC Right for You?

Whether an IPRC is right for you depends on your individual circumstances, your strengths and abilities, and the school. You do not need an IPRC in order to get services, accommodations or an Individual Education Plan. Some benefits of the IPRC process include:

- It provides a legal avenue to appeal a placement decision; and
- Ensures that an Individual Education Plan (IEP) will be created after 30 days of the start of the placement.

If you want more information about IPRC's you should visit:

<https://www.advocacyforinclusion.com/copy-of-video-03-advocacy-101>

What is an IEP and how can it help me?

An Individual Education Plan (IEP) is a plan to figure out how best to educate a student. It is written by your school. The school is supposed to talk to you and your parents about what should be in it. The IEP sets out your learning expectations and any accommodations that you may need to get a meaningful education.

Once an IPRC decides where you should be placed, and your parents agree with the placement, a school has to write an IEP for you within 30 days.

Even if you do not have an IPRC decision, you can still get an IEP. This is often important because it can ensure that the expectations for you, the school and your parents or guardians are clear. It will lay out what the school should

be providing, what your parents are supposed to do and what your responsibilities are.

The IEP should be regularly reviewed to ensure that it is up to date and that it meets your needs.

Finally, it is very important to remember that having an IEP or an IPRC decision is not needed to get accommodations. You are entitled to accommodations whether there is an IEP or IPRC or not. The IEP and IPRC are just tools to help you get the accommodations you need.

If you want more information about IEP's you should visit:

<https://www.advocacyforinclusion.com/copy-of-video-03-advocacy-101>.

The Right to be in School

What are exclusions?

The final part of this booklet will talk about the right to be in school. Many students with disabilities still have trouble getting access to school all the time. This can happen because:

- They are told they cannot come to school by the principal because of a special section of the Education Act (s. 265(1)(m)).
- Their school day is shortened compared to other students (e.g. they go to school for two hours instead of six like other students).
- The school simply asks them to stay home (or asks their parents to keep them home).

When these things happen to a student, we call it an “exclusion”. It is important to remember that these are different from suspensions and expulsions. Suspensions and expulsions are part of discipline while exclusions often happen to students for other reasons.

Don't I have the right to be in school?

You do have the right to be in school. This right is in the *Education Act* and the *Code*. The *Education Act* says that any pupil who lives in Ontario has a right to go to school. They have this right even if their parents are not Canadian or do not have legal status in Canada.

There are only very specific times when a school board can tell you that you cannot come to school. This includes times when you have been suspended, expelled or excluded. However, even if a school does this, your parents have the right to appeal this decision and should do so if the decision is unfair. You should speak with a lawyer about this.

If you want to know more about exclusions, ARCH has developed a tool kit that can be accessed at www.archdisabilitylaw.ca.

For more information, you may also wish to visit:
<https://www.advocacyforinclusion.com/copy-of-video-06-inclusive-educatio>

Resources

If you require additional assistance, you can contact:

ARCH Disability Law Centre

Tel: 416-482-8255

TTY: 416-482-1254

Toll Free: 1-866-482-2724

TTY Toll Free: 1-866-482-2728

archintake@lao.on.ca

www.archdisabilitylaw.ca

Justice for Children and Youth

Tel: 416-920-1633

Toll Free: 1-866-999-JFCY (5329)

Website: www.jfcy.org

Human Rights Legal Support Centre

Tel: 416-597-4900

Toll Free: 1-866-625-5179

TTY: 416-597-4903

TTY Toll Free: 1-866-612-8627

Website: www.hrlsc.on.ca

Child Advocacy Project – A program of Pro Bono Law Ontario

Tel: 416-977-4448 ext. 226

website: www.childadvocacy.ca

Notes: