

Human Rights and Inclusive Education



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ARCH Disability Law Centre
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ARCH Disability Law Centre

- ARCH is a Specialty Legal Clinic in Ontario defending and advancing rights of persons with disabilities for over 35 years.
- ARCH's website: www.archdisabilitylaw.ca
- ARCH *Alert*



ARCH Services

- Summary Advice
 - Representation
 - Law Reform and Policy
 - Public Legal Education
-
- ARCH has financial eligibility criteria for some services.



Who can Receive ARCH Summary Advice Services

- People with disabilities who have inquiries about their:
 - human rights
 - attendant services
 - rights as a person living in a group home
 - rights as a student or a worker
 - right to exercise your capacity to make your own decisions



ARCH Services in Education

- Summary Advice:
 - e.g. requesting accommodations; challenging exclusion; human rights
- Litigation
 - e.g. cases that have systemic impact
- Law Reform
 - e.g. submissions to government on education related matters
- Public Legal Education

Human Rights Approach in Education

Goals of a human rights approach:

- Creating inclusive school cultures and enhancing citizenship
- Ensuring equal access to education services



Human Rights Approach in Education

- Ontario's *Human Rights Code*
- Ontario's *Education Act*



Human Rights Code: What's Covered

- The Code guarantees freedom from discrimination and harassment regardless of disability and/or other protected grounds;
- The Code applies to delivery of services including education.
- One year time limit to make application.



What Does “Disability” Mean?

- “Disability” is defined differently depending on the particular law in operation.
- The Human Rights Code protects students with disabilities, irrespective of whether the student has been formally identified through an IPRC process.



What is Discrimination?

- Generally discrimination means treating people differently because of their disability
and
- the different treatment hurts, harms, offends or prevents someone from getting where they need to go, getting what they need or reaching their goals.
- Discrimination also includes situations where a rule or policy seems to apply to everyone equally, but in practice has a negative impact on certain groups of people.



Human Rights Obligations in Education

- Ontario's Human Rights Code prohibits discrimination on the basis of disability in the context of education services;
- Those who provide education services have a duty to accommodate the needs of students with disabilities;
- Accommodation refers to the prevention and removal of individual and systemic barriers;
- Disability accommodations must be provided unless undue hardship is proven.



Notable Decisions

- Supreme Court of Canada decision in *Moore v. British Columbia (Education)*, 2012 SCC 61;
- This decision provides guidance on how human rights cases within the education context are to be adjudicated;
- Human Rights Tribunal of Ontario adopts the Moore decision and concept of 'meaningful access' in *R.B. v. Keewatin-Patricia District School Board*, 2013 HRTO 1436



Examples of Accommodations

- Modified curriculum
- Extra time for completing tests and assignments
- Alternative forms of evaluation
- Academic materials in alternative formats
- Provision of and training on adaptive technology
- In-class assistance and supports



Components of the Duty to Accommodate

- Duty to accommodate is both substantive and procedural.
- Substantive = considers the appropriateness of the accommodation provided or whether it cannot be provided because of undue hardship.
- Procedural = the methods and approach to developing and implementing the accommodations.



Duty to Accommodate: Substantive

- Accommodations must be appropriate, individualized and respect the dignity of the student.
- Accommodations depend on the strengths, needs and requirements of the individual student with a disability, as well as the context.
- What is appropriate for one student may not be appropriate for another.
- Accommodations must be provided in a timely manner.



Duty to Accommodate: Procedural

- Education service providers must:
 - Conduct an individualized assessment of the student
 - Take appropriate steps to sufficiently determine an appropriate accommodation
 - Where necessary, consult with experts and others to assist in gathering and understanding facts and information relevant to providing accommodation



Undue Hardship

- Disability accommodations must be provided up to the point of undue hardship
- Undue hardship under Ontario's Human Rights Code, consists of :
 - costs;
 - outside sources of funding, if any; and
 - health and safety requirements, if any.



Responsibilities of Parents/ Guardians and Students

- Tell the education provider about need for disability-related accommodations;
- Make his or her needs known so that the education provider can implement an appropriate accommodation;
- Assist and collaborate in finding accommodations by providing relevant information, answering questions, co-operating with experts, participating in discussions, etc.

Source: Ontario Human Rights Commission's *Guidelines on Accessible Education*



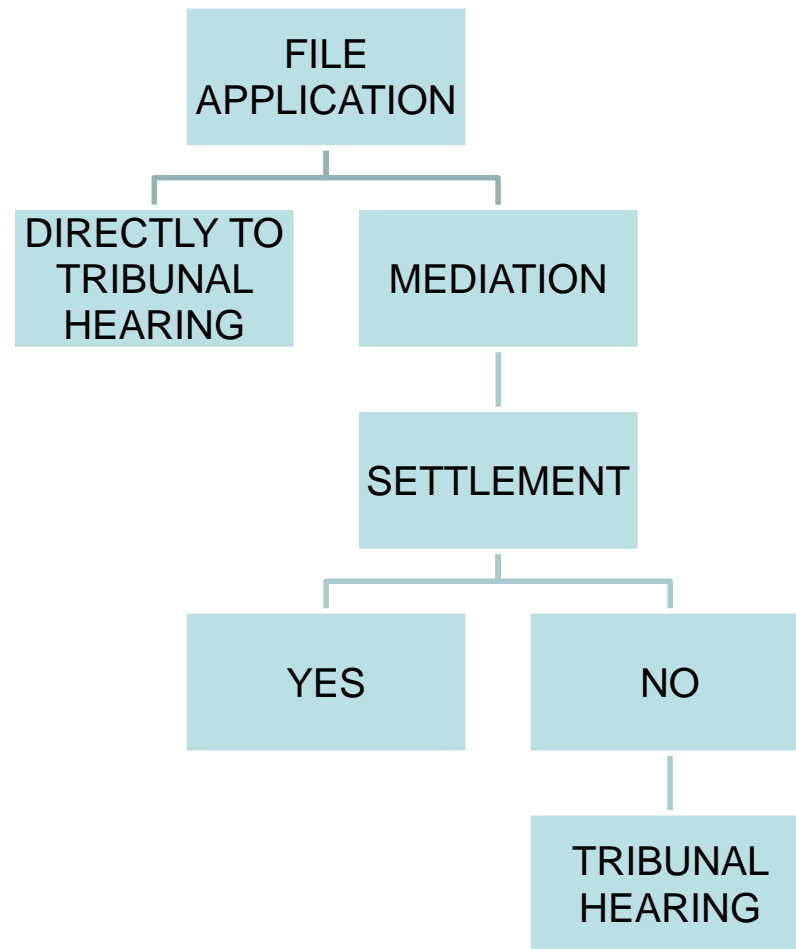
Responsibilities of Education Service Provider

- Advise students, or their parent/guardian of available accommodations, and the process to obtain them;
- Investigate and canvass possible accommodation solutions;
- Where necessary, obtain expert opinion or advice (costs are to be borne by the education provider);
- Provide accommodations in a timely manner.

Source: Ontario Human Rights Commission's *Guidelines on Accessible Education*



Human Rights Tribunal of Ontario



The Value of Informal Processes

The Ministry, and those at ARCH, both recognize that informal conflict resolution is often the most effective approach;

Informal processes can involve all interested parties, and allow for timely solutions to problems – formal processes can take much longer and be detrimental to students;

These processes may include the help of a third-party facilitator.

Source: Ministry of Education. *Shared Solutions: A Guide to Preventing and Resolving Conflicts Regarding Programs and Services for Students with Special Needs* (Toronto: 2007).



Bill 8 – Amendments to *Ombudsman Act*

- As of September 2015, Ombudsman Ontario may investigate any decision, recommendation, act or omission made by school board administrators, including decisions on the accommodation of exceptional pupils;
- The Ombudsman may only make recommendations;
- **Phone:** 1-800-263-1830
Fax: 416-586-3485
TTY (Teletypewriter): 1-866-411-4211
E-mail: info@ombudsman.on.ca



Advocacy Checklist

- Use the *Guidelines on Accessible Education* to help you negotiate with the teacher, principal or Superintendent of Special Education for accommodations
- Keep notes of conversations with teachers, principal, Superintendent of Special Education
- Keep copies of school records, letters sent to and from school
- Consult and get the support of outside professionals if required (e.g. MD, social worker, psychologist etc.)
- If needed, keep track of behaviours and/or incidents
- Call ARCH Disability Law Center for legal information and advice
- Explore informal resolution processes
- Consider whether a human rights application may be appropriate



Legal Resources

Ontario Human Rights Commission Guidelines on Accessible Education

<http://www.ohrc.on.ca/en/guidelines-accessible-education>



Legal Resources

ARCH Disability Law Centre

Tel.: 416-482-8255 Ontario Toll Free: 866-482-2724

TTY: 416-482-1254 TTY Toll Free: 866-482-2728

Website: www.archdisabilitylaw.ca

Justice for Children and Youth

Tel.: 416-920-1633

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

Website: www.jfcy.org



Legal Resources

Human Rights Legal Support Centre

Tel: (416) 314-6266

Toll Free: 1-866-625-5179

TTY: (416) 314-6651

TTY Toll Free: 1-866 612-8627

Website: www.hrlsc.on.ca

Child Advocacy Project (Pro Bono Law Ontario)

Tel.: 416-977-4448 ext 226

Toll Free: 1-866-466-7256

Website: www.childadvocacy.ca



Thank you!!

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Fax: 416-482-2981 or 1-866-881-2723

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