

# Human Rights and Inclusive Education



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**ARCH Disability Law Centre**  
Luke Reid, Staff Lawyer

# 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](http://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*



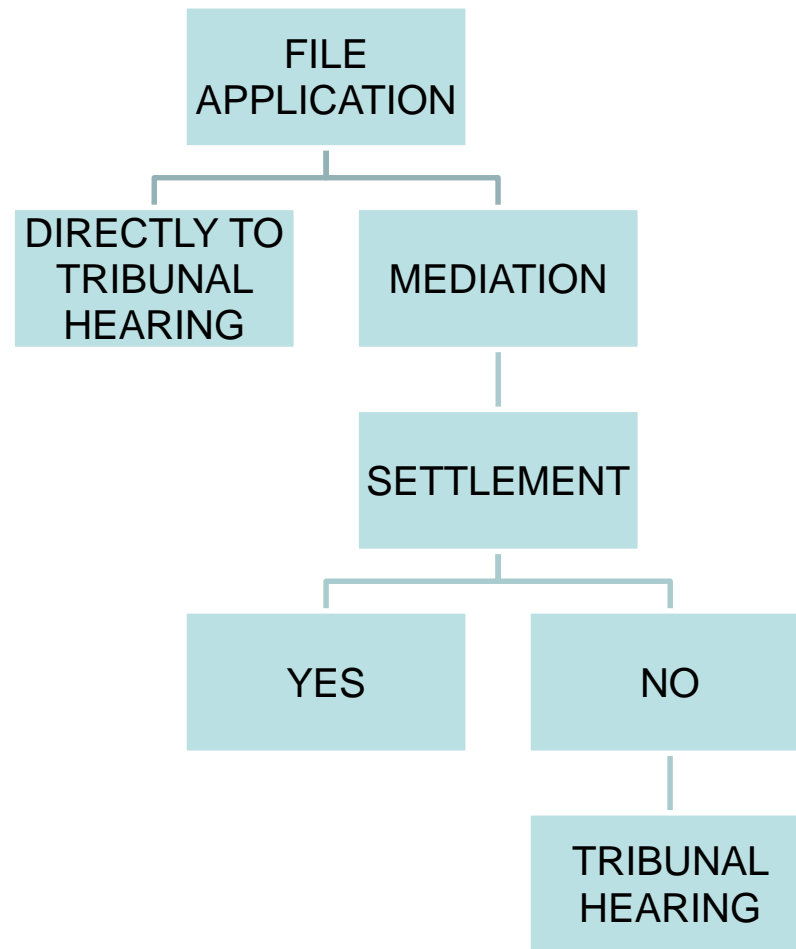
# Responsibilities of Education Service Provider

- 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](mailto: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](http://www.archdisabilitylaw.ca)

## **Justice for Children and Youth**

Tel.: 416-920-1633

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

**Website:** [www.jfcy.org](http://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](http://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](http://www.childadvocacy.ca)



# Thank you!!

## **ARCH Disability Law Centre**

[www.archdisabilitylaw.ca](http://www.archdisabilitylaw.ca)

55 University Avenue, 15<sup>th</sup> Floor  
Toronto, Ontario M5J 2H7

Tel: 416-482-8255 or 1-866-482-2724  
TTY: 416-482-1254 or 1-866-482-2728  
Fax: 416-482-2981 or 1-866-881-2723

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