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
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, cooperating 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

FILE APPLICATION

DIRECTLY TO TRIBUNAL HEARING
MEDIATION

SETTLEMENT

YES
NO

TRIBUNAL HEARING
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.

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
Ontario Human Rights Commission
Guidelines on 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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