What if the school excludes my child?

Working With Your School Board · https://inclusionactionontario.ca/docs/what-if-the-school-excludes-child/

Your child has been sent home by the principal using the exclusion power. Or you are experiencing near daily phone calls asking you to pick up your child due to "behaviour". Your school refuses to let your child come on a school trip, because you are unable to make yourself available to support your child on the trip; or you can't provide transportation for the child, and the school bus is not accessible. All of these scenarios are problematic, and may well be illegal.

The School Board has a legal duty to educate your child for five hours a day. Students with disabilities are more frequently told not to come to school than their typical peers, however. They are often left out of other aspects of school life, like school trips and clubs. Special education classrooms, particularly for developmental disability, frequently have "early dismissal", simply as a practice.

These exclusions are not only very disruptive for the child, but also for the family. More often than not, mothers in particular bear the brunt of these exclusions, by having their work day interrupted frequently. Eventually, employers lose patience. Rather than fight a second human rights battle at work, mothers drop out of the workforce altogether, or radically alter their working life. The consequeces to her and the family can be enormous.

Frequently, in boards where special education classrooms are prevalent, the end conclusion of exclusions is placement in a special education classroom. Sometimes, excluded students are transferred to a different school, out of their neighbourhood, even if that does not mean a special education classroom. This is particularly the case where there are "behavioural" challenges; yet the board may not have universally designed, adapted or modified the curriculum, routines or physical environment of the classroom to meet the student's needs. Ultimately, we know the vast majority of children with disabilities can be accommodated in the regular classroom and that the benefits of doing so are significant.

Exclusions have garndered media attention in recent years and have brought out the usual arguments against inclusion of students with disabilities in the general education classroom.

It is important, then, to understand your rights and how you can work with the board to avoid this.

How do exclusions happen?

Exclusions can happen in three main ways: modified days, refusals to admit, or "voluntary" withdrawal.

Modified Days

If a student has been identified as “exceptional” through the Identification, Placement and Review Committee (IPRC) the school board has an option, under Reg. 298, subsection 3(3), to reduce the instructional day to less than five hours. This is more commonly known as a modified day. This can be considered "partial exclusion" in circumstances where it is being done without the consent of the family, and not for the benefit of the student.

Refusals to Admit

Sometimes, principals will exercise a power known as a "refusal to admit", more commonly known as an exclusion. Under section 265(1)(m) of the Education Act, a principal can "refuse to admit to the school or classroom a person whose presence in the school or classroom would in the principal's judgment be detrimental to the physical or mental wel-being of the pupils."

"Voluntary" Withdrawal

Sometimes schools just call and ask for a "voluntary" withdrawal of a student and parents accede to the request. This can be for days at a time, whether part or full days. This is also called an "informal exclusion".

What are your rights?

It is important to remember that students with disabilities have the right to attend school without discrimination. Boards have a legal obligation to accomodate disability.

Modified days will not be legal at all if your student is not identified as "exceptional" through an IPRC process. This is one more reason to avoid the IPRC process. In practice, without the formal

identification through an IPRC, if a reduced instructional day is right for your child and family, parents and boards can and do, consensually, arrange for this.

Exclusions under section 265(1)(m) are subject to an appeal to the Board. If an exclusion, or modified day, is happening because a board has failed to properly accommodate a student's disability related needs, then the exclusion may amount to discrimination. Boards cannot, for their own convenenience, exercise these powers or request "voluntary" withdrawal. For example, if an education assistant will be absent on a given day, the board cannot ask you to keep your child home because they have not made adequate staffing arrangments.

It's worth noting that there is some question about whether the section 265(1)(m) exclusion power, when used against students, as opposed to others who may attend at a school, is even legal. We direct you to ARCH Disability Law's paper on the topic for an indepth review: "Invented Power: An Analysis of the Exclusion Clause in Ontario's Education Act, 2017".

Lastly, boards should not be using these powers as a form of discpline. Ministry of Education Policy/Program Memorandum (PPM No. 145) regarding progressive discpline and promoting positive student behaviour notes:

> Exclusion is not to be used as a form of discpline. If a principal does decide that it is necessary to exclude a student from the school, the principal is expected to notify the student's parents of the exclusion as soon as posible in the circumstanes, and inform them of their right to an appeal.

Reform and Board Procedures

Disability advocates have called for reform in this area given the serious consequences to a student and families. This means more boards have developed policies or procedures related to exclusions. The Toronto District School Board developed a policy at the urging of its Special Education Advisory Committee in 2019.

How can I work with the board to avoid an exclusion?

ARCH Disability provides a detailed discussion of this topic on their website, including advocacy tips and Frequently Asked Questions. Here are some of their key tips:

- Keep the lines of communication open.
- Keep notes of your conversations with teachers and school officials. Include the date and who you spoke to or who attended the meeting.
- Keep copies of school records and letters sent to and from the school.
- Share information about your disability-related needs.
- Find out if the school board has a policy on exclusions. Ask for a copy of the policy.

What if I need some legal help?

If you are struggling with exclusions, you can get free legal advice from the Human Rights Legal Support Centre, ARCH Disability Law, or Justice for Children and Youth.