

## Education Law

### Human Rights Code

- Duty to Accommodate in the provision of services, including education (disability became a ground under the HRC in 1981)
- Disability is broadly defined
- Undue Hardship: financial test; health and safety test
- Moore decision (case note from Council of Canadians with Disabilities)
- An Individual Education Plan may be used to outline accommodations or other supports for disability
- Regular classroom is the only legally permissible placement in the absence of a placement decision under the *Education Act* into a special education classroom

### Education Act

- Identification Placement and Review Committee
  - Highlights of Regulation 181/98
  - Exceptionality (11 categories within four main categories: communication, behavioural, intellectual, physical – “12<sup>th</sup> category” is multiple exceptionalities)
  - Decides placement and exceptionality – can only make recommendations about special education programs and services
  - If identified with an exceptionality, an Individual Education Plan is required
- Decision is to be based on the best interests of the student
  - Required to be regular classroom if committee is satisfied the regular class meets the student’s need and is consistent with parental preferences
    - In practice: children are sometimes placed in spec ed classes “on consent” without IPRC
  - If the committee decides that the student should be placed in a special education class, it must state the reasons for that decision in its written statement of decision

What will the IPRC’s written statement of decision include?

The IPRC’s written statement of decision will state:

- whether the IPRC has identified the student as exceptional;
- where the IPRC has identified the student as exceptional,

- the categories and definitions of any exceptionalities identified, as they are defined by the Ministry of Education;
- the IPRC's description of the student's strengths and needs;
- the IPRC's placement decision; and
- the IPRC's recommendations regarding a special education program and special education services;
- where the IPRC has decided that the student should be placed in a special education class, the reasons for that decision.

Appeal Process – described in parent guides

- if do not agree
  - within 15 days, ask for another meeting; if does not agree with second decision file notice of appeal
  - within 30 days, file a notice of appeal with secretary of the board
  - Will be heard by the Special Education Appeal Board
  - Appeal from there to the Special Education Tribunal

Mostly overtaken by HRTO applications

Is the IPRC a barrier? *“A Relic of the Past: Identification, Placement and Review Committees in Ontario’s Education System”*, Canadian Journal of Educational Administration and Policy, 194, 51-74, Nov 2020 (Luke Reid, Gillian Parekh, Robert Lattanzio)

- heavily based in the remedial, medical model
- designed to categorize students and fit into the existing structures of the education system, rather than a mechanism to truly provide individualized support
- administrative convenience reigns for this model
- categorization with an exceptionality does not necessarily convey how a particular student should be taught or accommodated
  - more important for teacher to develop a relationship with their students and learn how to functionally accommodate them in their classrooms
  - differentiation of instruction isn't based on a label
  - stigmatizing
  - many children from historically marginalized communities are disproportionately represented in special education programs

- props up a segregated system – idea that children should be identified and streamed into segregated classrooms was controversial even in the 1980s
  - no data to support segregated model
  - research was at best inconclusive then, now clear either no observable differences or significant benefits in the regular classroom
  - segregation reproduces inequitable social, class and racial stratification
- eliminated funding on basis of identification, now a statistical model

Where the Human Rights Code and Education Act meet: [Individual Education Plan](#)

- An IEP is required by law if a child is identified with an exceptionality
- However, it is also the tool boards use in the absence of an identification, but where a disability is known that requires accommodation – accommodation is required by law under the Human Rights Code

Modified Day – O. Reg. 298, s 3(3) – board may reduce the length of the instructional program on each school day to less than five hours a day for an exceptional pupil in a special education program

Refusals to Admit – s.265(m) – subject to an appeal to the board, to 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 well-being of the pupils (a.k.a Exclusions)

Expulsions and Suspensions - [sections 310 to 316, Reg. 298](#)

Special Education Programs and Services – [s. 30 and 31 \(class sizes\)](#)

[Special Education Advisory Committee](#) – O. Reg. 464/97

[Special Education Plan](#) – Ministry Guide

[Accessibility for Ontarians with Disabilities Act](#) –

- [Integrated Accessibility Standards](#) - requires accessible format materials
- [Draft K-12 Education Standards](#) just released for comment (comments due Sept 2)

[UN Convention on the Rights of Persons with Disabilities](#)

- [Article 24](#) - Education
- [General Comment No. 4 \(2016\): Article 24, Right to Inclusive Education](#): right to inclusive education and state parties are to move progressively towards advancing inclusive education

### **Key Resources and Support**

[ARCH Disability Law Centre: Inclusive Education Initiatives](#)

[Community Living Ontario: Inclusive Education](#)

[Human Rights Legal Support Centre](#)

[Inclusive Education Canada](#)

[Integration Action for Inclusion](#)

[Ontario Autism Coalition: 2020 OAC Education Resource Guide](#)

[Ontario Human Rights Commission: Policy on accessible education for students with disabilities](#)

Special Education Programs and Services - Education Act: [summary information](#)