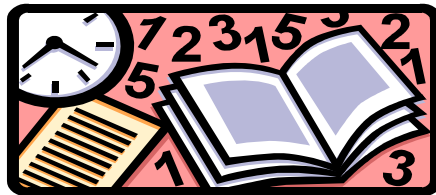


**“I am a student
with special learning
needs - What are
my rights to receive
special education
supports?”**



Students and Parents Legal Guide
on the Legal Aspects of Special Education in Ontario



Who is supposed to receive special education in Ontario schools?

Students who are identified as “exceptional” have a right to special education.

What is an exceptional pupil?

A student who requires a special education program is called “exceptional”. There are five categories of “exceptionality”: behaviour; communication; intellectual; physical; and multiple (more than one exceptionality). Most exceptionalities are considered disabilities under the Ontario *Human Rights Code*.

How do I get information about special education in my school board?

Every school board must have copies of a parent’s guide available in schools and at its head office. The guide must explain how the board decides whether a student has special education needs. It will explain how they identify the student and decide what kind of classroom the student should be placed in. It also contains information on parent and student’s rights, including the right to appeal decisions. It outlines how the board will provide special education services, and whether they purchase these services from another school board.

How are students identified as exceptional?

Students are identified as “exceptional” by an Identification, Placement and Review Committee (IPRC).

How do students get to the IPRC?

Parents who believe their child has special needs should submit a written request for an IPRC to the principal. Students over 18 can make their own request. Students of any age, who believe they have special needs, should tell the principal of their school. The principal may also refer a student without a parent’s request or consent, usually on the advice of the teacher. In either case, within 15 days, the principal must ensure the parents receive a copy of the parent’s guide, and written notice of the approximate date of the IPRC. The principal may also ask the parent for written permission to conduct a health and/or psychological assessment.

What if the principal refuses to ask for an IPRC?

The principal cannot refuse to refer the pupil to an IPRC (*Education Act Regulations*, O. Reg. 181/98, s.14).

What does the IPRC do?

After listening to all the information, the IPRC decides whether a student is exceptional, the type of exceptionality, and what the placement should be for that student. Once a student is identified as exceptional, it also reviews every identification and placement at least once every school year. There will be at least three members on the Committee, including a principal and a superintendent (or designate).

After the IPRC makes a decision, parents and students over 16 will receive a written decision that states whether the student is exceptional. It will also state the student’s strengths and needs, the type of exceptionality, the type of classroom (“placement”) the student should be

placed in, and any recommendations for programs and services. Parents may also make a written request to the principal and the designated representative of the school board for a follow-up meeting with the IPRC. As soon as possible after the meeting, the IPRC must give a written notice saying whether or not there are any changes to the original decision. If there are any changes, there must also be written reasons.

If the parent agrees with the decision, the student will be placed in the recommended class. If a parent does not agree but does not appeal the decision, the student will be placed after 30 days. If you do appeal, the placement will not change until the appeal is over.

Whether there is an appeal or not, the school must always try to accommodate the student's needs in the meantime.

What are the rights of students and parents at an IPRC?

Parents and students over 16 have a right to attend and present their views and information at the IPRC. You may also bring a representative to speak for them, an interpreter if needed, and other people to speak about the student's needs, such as advocates from the Learning Disabilities Association or the Association for Bright Children or the Association for Community Living.

The more information you have, including reports from doctors and psycho-educational assessments, the better the IPRC will be able to do its job, especially if you and the school disagree about the needs of your child. If you know how your child learns best or a variety of ways to help your child concentrate or improve behaviour, you should let the IPRC know. You should give information about your child specifically, not just about kids with autism generally, for example. Students who are under 16 may ask to attend, or at least to have their wishes heard.

Where can an exceptional student be placed?

An exceptional student can be placed in a:

- regular class with special education services;
- regular class but taken out for part of the day for special services or special education instruction from a special education teacher, an educational assistant or other specialist;
- special education class for the whole day;
- special education class with part of the day in a regular class; or
- special education school.

The IPRC may refer the pupil to a provincial committee for admission to one of the Provincial Schools for blind, deaf or deaf-blind students or to one of the Provincial Demonstration Schools for students with severe learning disabilities, but these schools do not have to accept a student if they do not have room or think their program is not suitable.

The IPRC cannot place a student in a treatment facility, sometimes called a Section 20 (formerly section 19) school or special care facility. This kind of educational setting must be requested by the parent.

What if I do not agree with the decision of the IPRC?

Parents can appeal the identification and/or placement, but not the programs and services the school intends to provide. You must file a notice of appeal with the secretary of the board. You must say what part of the IPRC decision you disagree with (identification or placement or both) and why you disagree. The IPRC committee may hold a second meeting.

If you are still unsatisfied with the identification and/or placement after the second meeting with the IPRC, you can appeal the IPRC decision to the Special Education Appeal Board (SEAB). If your disagreement is about the programs or services the school board says it will provide, you also appeal the decision to the Special Education Appeal Board. In addition, you can file a complaint with the Human Rights Tribunal of Ontario. For advice and assistance in filing your application, you can contact the Human Rights Legal Support Centre.

What is the Special Education Appeal Board (SEAB)?

The SEAB is a panel of three people who will review the IPRC decision. One person is appointed by the parent, one person is appointed by the school board, and a third person is agreed to by both. The school board or SEAB chair must give you written notice at least 10 days before the appeal board meets. Parents and students over 16 have the right to attend and participate in the meeting. The process may be slightly more formal than the IPRC, but will still be a fairly informal review of the information about the student and of what the principal and the parent each think is best for the student. It is unusual for lawyers to be present.

If you have new or more complete expert information, you should ask the SEAB to consider it. Parents and students over 16, and the school board, will receive a written statement of the SEAB's recommendations and the reasons for them. Within 30 days of receiving the statement from the SEAB the school board must decide whether to accept or reject the recommendations. The school board must send notice of its decision to parents and students over 16.

What if I disagree with the school board's decision?

You can appeal the decision to the Ontario Special Education Tribunal.

What is the Ontario Special Education Tribunal?

The Ontario Special Education Tribunal (Tribunal) is independent of the school boards and made up of people from different professions such as: doctors, lawyers, social workers, and retired educators and academics.

Appeals must be made in writing to the secretary of the Tribunal at:

Special Education Tribunal
710 - 2 Carlton Street
Toronto, Ontario M5B 1J3
Tel: 416-325-2829 / Fax: 416-325-3318

The Tribunal has broad powers and its process is fairly formal. The school board usually has a lawyer. Often parents are encouraged to participate in a mediation to see whether the school board and the family can come to an agreement before a hearing begins. Mediation is voluntary and confidential.

The Tribunal may dismiss the appeal, or grant the appeal and set aside the identification, placement or both. If they grant the appeal they may substitute their own identification and/or placement. Even though the Tribunal decides identification and placement, sometimes it also talks about appropriate programs and services. The decision of a Tribunal is final and must be in writing. There is no automatic appeal to a court from the Tribunal's decision, but in some rare circumstances, it may be possible to ask a court for a judicial review. You could talk to a lawyer about this possibility.

More information on the Tribunal, including its processes, timelines and prior decisions, is available on their website: <http://oset-tedo.ca>.

What if the principal or school board does not agree with the decision of the Special Education Tribunal?

The decision of the Tribunal is final and binding on all parties including the principal and school board.

Am I allowed to have a lawyer represent me in appeals of the IPRC?

Yes. If you cannot afford a lawyer you should call Justice for Children and Youth, your local legal clinic, or Pro Bono Law Ontario to see whether they can help find a lawyer for you.

What if I initially agree to my child's placement, but then find it is not meeting their needs?

After a student has been in a placement for three months, parents may request an IPRC review. Within fifteen days of receiving the request, the principal must send the parent a written statement of the time and place of the review. The principal can ask for a review any time, but must give parents notice in writing.

What obligations do schools have to provide programs and services to exceptional pupils?

Each student who is identified as exceptional must be provided with appropriate programs and services. The student must have an Individual Education Plan (IEP) which contains specific learning expectations and the school's outline of educational services to address them. For example, whether they will provide an educational assistant or whether a speech pathologist will work with the student every other week.

The IEP must also explain how the student's progress will be reviewed. For students who are 14 years of age or over (and not solely gifted), it must also include a plan for the student's transition into the world after high school. Parents and students over 16 must be consulted about the IEP. They must also receive a copy of it within 30 days of a student's placement in a special education program.

What if I think the school is not delivering adequate programs and services?

Exceptional students are entitled to "appropriate" programs and services. "Appropriate" does not mean that they have to be the best programs or services available anywhere, but they must be good enough to meet the student's needs. This is sometimes a difficult area to work out with the school board and there is no simple way to appeal the level of services or types of programs

the school provides. However, the Special Education Tribunal has made it clear that finding the right placement must include some consideration of the programs and services that will be delivered.

If you are not happy, you can ask to speak with the principal and/or the special education teacher. You may also want to speak to the superintendent in charge of special education and explain why the program is not working.

Parents and students, who do not believe the school is providing programs and services that accommodate their disability, may file a complaint with the Human Rights Tribunal of Ontario. For advice and assistance in filing your application, you can contact the Human Rights Legal Support Centre.

What if the exceptional student is suspended or expelled?

Some principals and school boards believe that the *Safe Schools Act* forces them to suspend and/or expel all students for certain listed behaviours - this is wrong. If a student's actions are the result of their disability and therefore not within their control, then the school has a legal obligation to accommodate the disability before considering disciplinary action. This means the principal must find alternative ways to deal with the student's behaviour, for example, closer supervision.

If the school has accommodated the student's disability to the point of it causing an undue hardship to the school board, then the student can be disciplined for misconduct. It should happen only when other methods of maintaining order in the school do not work.

If the student's disability has not been accommodated the parent should appeal the suspension or fight the expulsion. You may qualify for legal aid for a lawyer to represent you at an expulsion hearing.

Parents and students may wish to file a human rights complaint if the appeal does not reverse the suspension decision or an expulsion is imposed.

Do exceptional students have the right to be in school for an entire day?

Although the instructional day must generally be at least 5 hours long, the instructional day for exceptional students may be reduced to less than 5 hours a day if that is appropriate for the student. This decision can only be made by the school board, not the principal or superintendent.

Are there rules for class sizes for special education classes?

There are rules limiting class size depending on the exceptionality of the students. When exceptional students are placed in a regular classroom, the normal class size limits apply.

Do exceptional students have a right to transportation?

There is no right to transportation for any student under the *Education Act*. However, if the board does provide transportation, it must also provide transportation for students with disabilities. This may mean providing a specially modified vehicle to transport the student.

Hey! I'm the actual student! Don't I have any rights?

If you are 18 or older, any rights a parent would have for their children under 18 are your rights. In fact, your parents have no rights any more. You might, however, think it is helpful to ask them to attend before the IPRC or appeals with you.

If you are 16 or older, you have the right to attend your IPRC and to give the committee any information you think is useful in deciding your educational needs. You are entitled to receive a copy of any information about you that others give the IPRC. You are probably old enough to give or refuse your own consent to having a health assessment or a psychological assessment done for the IPRC. You must be consulted about your IEP.

If you are under 16 and the IPRC thinks it is useful to interview you, the committee can only do so with your parent's consent.

Resources:

Kids Help Phone - www.kidshelpphone.ca
416-973-4444 or 1-800-668-6868 (outside Toronto)

Parent's Help Line - www.parenthelpline.ca

Justice for Children and Youth - www.jfcy.org
416-920-1633 or 1-866-999-JFCY (5329) (outside Toronto)

Pro Bono Law Ontario – Child Advocacy Project - www.probononet.on.ca
416-977-4448 ext. 226 or 1-866-466-PBLO (7256)

Ontario Special Education Tribunal - <http://oset-tedo.ca>
416-325-2829

Human Rights Tribunal of Ontario - www.hrto.ca
416-326-1312 or 1-800-598-0322 (outside Toronto)

Human Rights Legal Support Centre - www.hrlsc.on.ca
416-314-6266 or 1-800-625-5179 (outside Toronto)

This pamphlet is intended for parents and students of the publicly funded school system in the Province of Ontario. Its purpose is to give general information about special education. Speak to a lawyer or legal worker about specific questions. The information was accurate as of August 1, 2008.



www.jfcy.org