



ARCH Disability Law Centre

Advocacy Toolkit: Your Right to not be Excluded from School in Ontario

January 2019
Disponible en français

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**DISCLAIMER: The information provided in these materials is not intended to be legal advice. Consult a lawyer or legal worker if you need legal advice on a specific matter. This information is current as of January 2019.*

Please note that the information in this Toolkit does not apply to all situations. A person's accommodation needs may vary over time and at different points in the day. Always ask the person with the disability how to most appropriately accommodate them.

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Part 1: Introduction

As a student in Ontario’s primary or secondary schools, you are entitled to a meaningful and appropriate education. However, numerous barriers still prevent many students with disabilities from getting a proper education. One of the major barriers is the fact that students with disabilities are often told not to come to school. This often happens even if a student is not formally suspended or expelled. This is called an “exclusion.”

Definition of Exclusion: An exclusion is any sort of removal of a student from the school or classroom that is not voluntary and is not a suspension or expulsion.

Exclusions can occur in several different ways:

- Through the use of a special provision in the *Education Act* (s. 265(1)(m)). This provision states that a principal has a “duty” to exclude students who in their opinion would have a bad effect on other students;
- By shortening the length of a student’s school day (s. 3(3) *Regulation 298*). ARCH often refers to this type of exclusion as a ‘partial exclusion’; and
- By simply requesting that a student stay home or that a parent consent to a “voluntary withdrawal” of the student from school.

It should be emphasized that a suspension is very different from an exclusion. Students who have been suspended have a number of additional rights which do not exist for students who are excluded. For instance, the *Education Act* states that a suspension cannot be longer than 20 days.

What can you do if you are in one of these situations? This Toolkit has legal information to support students to advocate for their right to attend school.

Part 2: Know your Rights

Being excluded from the classroom can have a big impact on your learning. With this in mind, it is important to remember that you have the right, under the *Education Act* and the *Human Rights Code* (the 'Code'), to attend school without discrimination. Being excluded from your school can violate this right.

This toolkit will discuss each type of exclusion and how they may infringe on your right to education. This advocacy toolkit will attempt to both inform you of your rights and to provide you with useful tools and tips to ensure that you are getting a meaningful education.

Exclusion Provision in the *Education Act*

The *Education Act* states that a principal has a duty to exclude a student when their presence, in the principal's judgement, becomes "detrimental" to the "physical or mental wellbeing" of the students in the school. This provision gives a principal the power to exclude a student or any other person for many reasons. However, it is important to remember that there are limits on this power. It is best to use an example to illustrate what these limitations are.

Example: John, a student with a disability, is sensitive to excessive noises. When the classroom becomes really noisy, John finds it difficult to concentrate and becomes anxious. He just wants to escape the noise. However, his teacher forces him to stay in the classroom with the loud noise. One day he tries to leave the classroom because of the noise. His teacher stops him and in a panic John hits her arm. The teacher gets very mad at John and sends him to the principal's office. The principal feels that John cannot control his behaviour and excludes him from school until they can figure out what to do about this.

What can John do in this situation? What does he need to know?

The **first** thing that John needs to know is that he has some rights under Ontario's *Human Rights Code*. The *Code* protects people against discrimination because of their disability. It states that school boards must properly accommodate students with disabilities. Accommodation means that schools must work to remove barriers and ensure that students with disabilities can access their education.

In John's case, accommodation might mean reducing the volume of unnecessary noises in his classroom. This would allow him to control his behaviour because he would not be so anxious and would not need to escape the noise. The noise is a barrier to his education because it disrupts his time in class and also led to his exclusion. As part of their obligation to accommodate John, the school should take steps to reduce the noise level in the classroom.

If you would like to know more about accommodation, click here:
<https://www.advocacyforinclusion.com/copy-of-video-01-introduction>

The **second** thing that John needs to know is that he should not be punished or excluded for behaviour which happened because he was not accommodated. In many cases, principals will punish students with disabilities for behaviour related to their disability. This includes the situation described above - when John acted out because of the noise in the classroom. If a principal or school has not taken the proper steps to accommodate a student's behaviour, despite a clear need to do so, they have not met their legal obligations and should not punish or exclude the student.

A principal should always ensure that a student has been properly accommodated before they punish or exclude them, unless doing so would cause "undue hardship" for the school. Undue hardship happens where accommodating a student would be *very* expensive or a risk to someone's safety.

The **third** thing that is important to remember is that if a student like John has been excluded, for a disability-related reason, the *Code* says that the school has an obligation to do everything they can to get the student back to school as quickly as possible. In John's case this would mean reducing the volume of the noise in the classroom and getting him back to school quickly. For other students, they may need different things to get back to school. These could include getting assessments done, putting in place strategies to manage disability-related behaviour or giving extra staff support to students with disabilities to help them manage at school. In all of these cases it is important that the school board both pay for these supports and put these things into place quickly.

The **fourth** thing is that it is very important for students like John to know that they can appeal the decision by the principal to exclude them. Students have the right to appeal these decisions to the Board of Trustees at their School Board. The Trustees can overturn the decision if they think it is wrong. One of the reasons that a Board of Trustees will say that a decision to exclude is wrong is if it was done to punish the student for something. The Ministry of Education has said that excluding a student should not be a form of discipline. Program Policy Memoranda No. 145 states that:

“Exclusion is not to be used as a form of discipline. 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 possible in the circumstances, and to inform them of their right to appeal under clause 265(1)(m).”

There are specific steps that you need to take in order to appeal. If you want to appeal a decision like this, you should consider contacting ARCH or another lawyer to talk about how to appeal. In the meantime, here are some tips that you may want to think about.

Tip: In some cases, you (or your parents) may receive a letter formally telling you that you have been excluded and giving you the reasons for the

exclusion. If you have not received a letter, it is important to ask the school to provide you with one.

Tip: Many schools require you to take specific steps in order to appeal an exclusion. You should ask the school for their policy on appealing an exclusion. A policy is a document that lays out all of the steps you need to take in order to start an appeal.

Tip: If you have been excluded don't wait to talk to a lawyer. Call ARCH or another lawyer as soon as you can for some advice.

Partial Exclusions

Sometimes students with disabilities are not excluded for the whole day. If you only go to school for part of the day, this might apply to you.

Certain provisions under the *Education Act* allow a school board to shorten the school day of a student with a disability to less than the normal 5 hours of instruction. In some cases, this might be for the benefit of a student with a disability. For example, if they get tired very easily and cannot make it through a whole school day, then it might be okay to shorten their school day.

However, a school board cannot shorten a student's school day for their own convenience. For instance, a school board cannot shorten a student's day because they claim they do not have enough staff. It is the school board's responsibility to provide enough staff and they need to live up to this responsibility. Shortening a student's day for this reason would likely violate a student's rights under the *Code*.

Tip: If your school is suggesting a shortened school day, and you disagree with this, ask them to give you their reasons in writing. Once you receive this letter you should send your objections to them in writing. Before you do this you may want to speak with a lawyer at ARCH or another lawyer.

Informal Exclusions

Sometimes schools will simply ask your parents to keep you home. These are called “informal exclusions” or “voluntary withdrawals”. It is important to remember that you have a legal right to be at school. This means that outside of what was discussed above, schools have no legal way to prevent you from attending. This also means that it is up to you and your parent to decide whether you want to voluntarily withdraw or not. There may be some cases where you both think it is okay to withdraw. However, if this is not the case, it is important to tell the school that you want to be at school and to remind them that they are legally obligated to provide you with an education.

Here are some additional tips that can help with your advocacy efforts:

- 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.
- If you think you have been discriminated against because of your disability, you may contact ARCH Disability Law Centre for free, confidential legal advice and information.

Part 3: Frequently Asked Questions

The school regularly requests that I stay home. This is inconvenient for me and my parent, and undermines my education. What can I do?

This type of informal exclusion often happens to students with disabilities. It can easily be a violation of your right to attend school. Any requests that you stay home for any reason other than your benefit is not allowed. For instance, an educator **cannot exclude** a student with a disability for the following reasons:

- A shortage of resources or staff at the school;
- Appropriate accommodations have not been provided to the point of undue hardship;
- A field trip or special event is being held and parents are unwilling to provide added supervision or support; or
- A student with a disability has been moody / is having a hard day / is being loud.

If you are being excluded frequently with explanations like those above, you may want to write to the school board to tell them that this is not fair. For example, see **Letter 1** below for an example of a letter that a parent could choose to send a school board on the child's behalf in similar circumstances.

I have been excluded but I have not received any communication explaining why. What should I do?

You should immediately contact the school and request a formal letter outlining the reasons for the exclusion. If this does not come very soon after you ask for it, you should make this request in writing at the earliest possible date. See **Letter 2** below for an example of a letter a parent may choose to send to the school board on the child's behalf in similar circumstances.

What if I think a principal is misusing the exclusion provision?

Although the exclusion provision gives broad power to a principal to make decisions about excluding a student with a disability, sometimes principals use this section incorrectly. In these cases, students have several options:

- a. They may wish to appeal the decision to the Board of Trustees at their local school board; or
- b. They may wish to file a complaint at the Human Rights Tribunal of Ontario if they believe their rights have been infringed. You may need the assistance of a parent or guardian or another responsible adult to do this.

In both cases, you should seek legal advice before you take any steps.

Is there a time limit on how long a student can be excluded under s. 265(1)(m)?

Unfortunately the *Education Act* does not set a time limit for exclusions. However, school boards must still ensure that the necessary arrangements to support a return to school are quickly put into place. This means that if the school board is causing unnecessary delays for you to return to class, this would likely violate your rights under the *Code*.

If you have been excluded from school for a long period of time under s. 265(1)(m), you should seek legal advice.

My school is saying that I should only come in for part of the day. I do not agree with this decision. How do I challenge this?

Shortening your day should only be done if it is purely for your benefit. There may be times where it is helpful for you to only attend school part of the day.

However, there may also be other times where this decision is made for the convenience of the school. This is not allowed.

If this happens, it is best to seek legal advice. It will also be a good idea to send a letter asking for reasons from the school regarding why they are proposing a shortened day. You should ask them to give you these reasons in writing. When you get the reasons, you should send another letter to the school explaining why you do not agree with their reasons and request a meeting with the school to discuss the situation. See **Letter 3** below for an example of a letter that a parent may choose to send to a school board on the child's behalf in similar circumstances.

To prepare for this meeting, you should also talk to your doctor or any other professional who can write a letter to the school saying that being in school for a full day is in your best interests.

Looking for Legal Advice?

If you require additional assistance, you can contact ARCH or another legal clinic:

ARCH Disability Law Centre

Tel: 416-482-8255

TTY: 416-482-1254

Toll Free: 866-482-2724

TTY Toll Free: 866-482-2728

Email: archintake@lao.on.ca

Website: <http://www.archdisabilitylaw.ca/>

Justice for Children and Youth

Tel: 416-920-1633

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

Website: www.jfcy.org

Human Rights Legal Support Centre

Tel: (416) 597-4900

Toll Free: 1-866-625-5179

TTY: (416) 597-4903

TTY Toll Free: 1-866 612-8627

Website: www.hrlsc.on.ca

Child Advocacy Project – A program of Pro Bono Law Ontario

Tel: 416-977-4448 ext 226

website: www.childadvocacy.ca

Part 4: Sample Letters

These letters provide an illustration of what a parent might send when they are faced with common situations. They are for illustration purposes only and are tailored to a particular set of facts.

Letter 1 – Letter Requesting Information about an Exclusion

[Date]

[School Board Name]

[Street]

[City], Ontario

[Postal Code]

Attention: [School Board Contact Name]

Re: Request for information on exclusion

Dear Ms./Mr. [Insert Last Name],

I am writing to you regarding a series of concerning requests which were recently made to me by Mr. Joseph Black, Principal at East Ontario School. Over the past year, Mr. Black has requested on numerous occasions that I keep my child home for a number of different reasons, most recently as a result of several field trips and other special events which the school planned to hold. He advised me that he did not have appropriate staffing available to provide the type of one-on-one support that my child requires as a result of her disability.

For instance, on Friday May 13, 2019, he phoned me to advise me that my child could not attend the field trip to Ottawa with other students because that would require sending an extra Educational Assistant on the trip to support

my child. Furthermore, on June 25th and 26th of 2019, he phoned me again and requested that I not bring in my child on those days because her Educational Assistant had been reassigned to invigilate exams.

These requests are inappropriate. As you know, under Ontario's *Human Rights Code*, education service providers have an obligation to ensure that children with disabilities have equal access to education and must accommodate them in a manner that facilitates that access. This includes providing the one-on-one support that my daughter requires in *all* of her educational environments. Excluding her from a field trip that every other student gets to attend or from attending school on multiple days is not equal access.

While I am certainly sympathetic that staffing difficulties may make this challenging at times, it nevertheless remains the school's obligation to provide regular and consistent access to these necessary accommodations.

With this in mind, I respectfully ask that the [School Board] ensure that these requests are no longer made and that appropriate contingency plans are put in place to better ensure that the necessary resources are available to my daughter so that she can consistently access her education on an equal footing with others.

Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

[Author's Name]
[Street]
[City], Ontario
[Insert Postal Code]

Letter 2 – Possible Exclusion under s. 256(1)(m)

[Date]

[School Board Name]

[Street]

[City], Ontario

[Postal Code]

Attention: [School Board Contact's Name]

Re: Exclusion of [student's name]

Dear Mr./Ms. [Last Name]

I was recently advised by Ms. Josephine Black, Principal at West Ontario School that she had excluded my child, [child's name], from school as a result of an incident which occurred on the morning of May 12, 2018. As of yet, no letter has been provided explaining this decision or the events she referred to in our conversation.

Please immediately forward this letter, as well as the relevant appeal procedures and/or policies, to my attention.

Sincerely,

[Author's Name]

[Street]

[City], Ontario

[Postal Code]

Letter 3 – Request to Rescind a Shortened School Day

[Date]

[School Board Name]

[Street]

[City], Ontario

[Postal Code]

Attention: [School Board Contact's Name]

Re: Shortened Day of [Student Name]

Dear Mr./Ms. [Last Name]

As you may be aware, [School Board] recently made the decision to shorten the length of the instructional day for [student name]. The school board suggested that a shorter day was necessary to allow [student name] to acclimatize to his new school environment and to ensure that adequate supports were available to him while he is in school.

In our discussions about this matter, Mr. Joseph Black, Principal at East Ontario School suggested that this “gradual integration” into the school was necessary because, at present, he did not have enough appropriately trained staff to help manage my son’s behaviours.

This is an inappropriate reason to shorten the length of my son’s school day. The Ontario *Human Rights* Code guarantees the right for all students to meaningful access to education on an equal basis with others. Truncating the length of my son’s school day does not represent equal access.

While I understand that the school is suggesting that shortening his school day is for his benefit, this belief is not shared by his family doctor or psychologist, both of whom have provided us with a letter outlining the vital

importance of full time attendance for [student name]. These letters have been attached to this correspondence for your convenience.

I would also like to emphasize that the legal responsibility for providing appropriately trained staff remains with the school board. It is incumbent on the school board to ensure that *all* students have the necessary resources to succeed. To this end, any suggestion that a lack of appropriate staff can justify denying my son access to a fulsome education is impermissible. The appropriate remedy in a situation where adequate staffing is not available is to hire more staff, not deny children access to education.

In light of the above, I would like to request a meeting with the school board to discuss what steps the school board plans to take to ensure that my son can attend school on a full time basis in a manner similar to his peers.

I would appreciate it if someone could please contact me at their earliest convenience to set up a meeting.

Yours Truly,

[Author's Name]

[Street]

[City], Ontario

Notes: