



Summary of Duties: EAs and DECEs

While many schools in southern Ontario are closed to in-class instruction during this second wave, the Ministry of Education has required schools to remain open for special education students who cannot be accommodated through online learning.

CUPE education workers, such as Educational Assistants, are proud to play a critical role in supporting the education of special education students and ensuring they do not fall behind during this challenging time. Ongoing, quality education is vital for the future success of students with disabilities. Corners cannot be cut.

Special Education students who are attending otherwise closed schools are there to be taught. That is why the OSBCU is concerned by the numerous reports it has received of school boards forcing Educational Assistants to run special education services in the absence of a teacher. There are also reports of Designated Early Childhood Educators running kindergarten classes on their own.

Not only does this approach violate student rights, it also violates the clear provisions of the *Education Act*.

The *Education Act*, and the regulations enacted under it, establishes that:

- Only those who are members of the Ontario College of Teachers and with the legislatively established teaching qualifications can be assigned to teach (Act at s. 262; O. Reg. 298, s. 19).
- When it comes to special education, only teachers with a certificate of qualification and registration that indicates a qualification in special education can be assigned to or appointed to teach or be placed in charge of a special education class (O. Reg. 298, s. 19(6)).
- It is teachers who are responsible, by law, for the management of classes and who are required to be physically present in the classroom before and after school (Education Act, s. 264(1); O. Reg. 298, s. 20).
- Educational Assistants are skilled professionals, but they are not qualified as teachers and cannot take over these important teaching and classroom management functions.



- With respect to junior and kindergarten classes, teachers and DECEs coordinate the provision of education, but it is the teacher who is responsible for the management of the class (s. 264.1(1) of the Act; s. 3(1) of O. Reg 224/10). That means that no DECE should be running kindergarten classes in the absence of a qualified teacher.
- The *Education Act* allows for the appointment of unqualified people to act in the place of a teacher, but only in exceptional and/or emergency situations and even then, only for 10 days (O. Reg. 298, s. 21(1)). The pandemic is not a basis for ignoring the need to have teachers on site when there are teachers who are qualified and available to teach.
- If boards are putting special education students from different classrooms into one program, they must comply with the class size limits that are set out in the Act (see O. Reg. 298, s. 31). In other words, they cannot funnel all special education students from across the board into one classroom in order to save money, if that results in classes over the limit.

References

Education Act, RSO 1990, c E.2, s 264, <<http://canlii.ca/t/2c0#sec264>>

262 Except as otherwise provided in or under this Act, no person shall be employed in an elementary or secondary school to teach or to perform any duty for which membership in the College is required under this Act unless the person is a member of the Ontario College of Teachers. 1996, c. 12, s. 64 (11)

264 (1) It is the duty of a teacher and a temporary teacher,

teach

(a) to teach diligently and faithfully the classes or subjects assigned to the teacher by the principal;

learning

(b) to encourage the pupils in the pursuit of learning;

...



co-operation

(d) to assist in developing co-operation and co-ordination of effort among the members of the staff of the school;

discipline

(e) to maintain, under the direction of the principal, proper order and discipline in the teacher's classroom and while on duty in the school and on the school ground;

...

duties assigned

(l) to perform all duties assigned in accordance with this Act and the regulations.

264.1 (1) It is the duty of the following persons to co-ordinate the matters listed in subsection (2) and to co-operate with each other with respect to those matters:

1. Teachers.
2. Temporary teachers.
3. Designated early childhood educators.
4. Persons who, under the authority of a letter of permission, are appointed by a board to positions designated by the board as requiring an early childhood educator. 2010, c. 10, s. 16.

Same

(2) The matters referred to in subsection (1) are:

1. Planning for and providing education to pupils in junior kindergarten and kindergarten.
2. Observing, monitoring and assessing the development of pupils in junior kindergarten and kindergarten.
3. Maintaining a healthy physical, emotional and social learning environment.



4. Communicating with families.
5. Performing all duties assigned to them by the principal with respect to junior kindergarten and kindergarten. 2010, c. 10, s. 16.

Duties of teachers not limited

(3) Nothing in this section limits any duties of teachers under this Act, including duties related to report cards, instruction, training and evaluation of the progress of pupils in junior kindergarten and kindergarten, the management of junior kindergarten and kindergarten classes, and the preparation of teaching plans. 2010, c. 10, s. 16.

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Operation Of Schools – General, RRO 1990, Reg 298 <<http://canlii.ca/t/tb3#sec20>>

19. (1) In assigning or appointing a teacher to teach in a division or to teach a subject in a school, the principal of the school shall have due regard for the provision of the best possible program and the safety and well-being of the pupils. O. Reg. 183/10, s. 6.

(2) No teacher shall be assigned or appointed to teach except in accordance with the qualifications recorded on his or her certificate of qualification and registration or as otherwise provided in this Regulation. O. Reg. 183/10, s. 6.

(3) Despite subsection (2), the following assignments or appointments to teach may be made where a teacher's certificate of qualification and registration does not indicate the required qualification, if the teacher and principal agree to the assignment or appointment and the appropriate supervisory officer approves it:

1. A teacher whose certificate of qualification and registration indicates a qualification in the primary division, the junior division, the intermediate division in a general education subject listed in Schedule A or the senior division in a general education subject listed in Schedule A may be assigned or appointed to teach in any division or any general education subject.

2. A teacher whose certificate of qualification and registration indicates a qualification to teach in grades 9 and 10 in a technological education subject listed in Schedule B or grades 11 and 12 in a technological education subject listed in Schedule B may be assigned or appointed to teach any technological education subject in grades 9 and 10 or grades 11 and 12. O. Reg. 183/10, s. 6.



(4) An agreement under subsection (3) respecting the assignment or appointment of a teacher to teach in a division or to teach a subject for which he or she does not hold a qualification,

...

(b) shall not be made so as to permit a teacher whose certificate of qualification and registration indicates a qualification in the primary division, the junior division, the intermediate division in a general education subject listed in Schedule A or the senior division in a general education subject listed in Schedule A to be assigned or appointed to,

(i) teach or be placed in charge of a special education program or class,

(ii) teach French as a second language, or

(iii) teach a class for pupils who are deaf, hard of hearing or blind or have limited vision; and

(c) shall not be made so as to permit a teacher whose certificate of qualification and registration indicates a qualification in grades 9 and 10 in a technological education subject listed in Schedule B or in grades 11 and 12 in a technological education subject listed in Schedule B to be assigned or appointed to,

(i) teach or be placed in charge of a special education program or class, or

(ii) teach a class for pupils who are deaf, hard of hearing or blind or have limited vision. O. Reg. 183/10, s. 6.

...

(6) A teacher shall not be assigned or appointed to teach or be placed in charge of a special education program or class, even if the teacher's certificate of qualification and registration indicates a qualification in special education, unless,

(a) the teacher's certificate of qualification and registration indicates a qualification in the primary division, the junior division, the intermediate division in a general education subject listed in Schedule A or the senior division in a general education subject listed in Schedule A, and the appointment or assignment is to teach or be in charge of,



(i) a special education program or class in the primary division, the junior division, the intermediate division in general education or the senior division in general education, or

(ii) a special education program or class in a secondary school, other than a program or class in general or technological education; or

(b) the teacher's certificate of qualification and registration indicates a qualification in grades 9 and 10 in a technological education subject listed in Schedule B or in grades 11 and 12 in a technological education subject listed in Schedule B, and the appointment or assignment is to teach or be in charge of,

(i) a special education program or class in technological education, or

(ii) a special education program or class in a secondary school, other than a program or class in general or technological education. O. Reg. 183/10, s. 6.

...

20. In addition to the duties assigned to the teacher under the Act and by the board, a teacher shall,

(a) be responsible for effective instruction, training and evaluation of the progress of pupils in the subjects assigned to the teacher and for the management of the class or classes, and report to the principal on the progress of pupils on request;

(b) carry out the supervisory duties and instructional program assigned to the teacher by the principal and supply such information related thereto as the principal may require;

(c) where the board has appointed teachers under [section 14](#) or [17](#), co-operate fully with such teachers and with the principal in all matters related to the instruction of pupils;

(d) unless otherwise assigned by the principal, be present in the classroom or teaching area and ensure that the classroom or teaching area is ready for the reception of pupils at least fifteen minutes before the commencement of classes in the school in the morning and, where applicable, five minutes before the commencement of classes in the school in the afternoon;

(e) assist the principal in maintaining close co-operation with the community;



(f) prepare for use in the teacher's class or classes such teaching plans and outlines as are required by the principal and the appropriate supervisory officer and submit the plans and outlines to the principal or the appropriate supervisory officer, as the case may be, on request;

(g) ensure that all reasonable safety procedures are carried out in courses and activities for which the teacher is responsible;

(h) co-operate with the principal and other teachers to establish and maintain consistent disciplinary practices in the school;

...

Appointment to Teach in the Case of an Emergency

21. (1) Where no teacher is available, a board may appoint, subject to [section 22](#), a person who is not a teacher or a temporary teacher. R.R.O. 1990, Reg. 298, s. 21 (1).

(2) A person appointed under subsection (1) shall be 18 years of age or older and hold an Ontario secondary school diploma, a secondary school graduation diploma or a secondary school honour graduation diploma, or an equivalent to any of them. O. Reg. 29/08, s. 2.

(3) An appointment under this section is valid for ten school days commencing with the day on which the person is appointed. R.R.O. 1990, Reg. 298, s. 21 (3).

31. The maximum enrolment in a special education class shall depend upon the extent of the exceptionalities of the pupils in the class and the special education services that are available to the teacher, but in no case shall the enrolment in a self-contained class exceed,

(a) in a class for pupils who are emotionally disturbed or socially maladjusted, for pupils who have severe learning disabilities, or for pupils who are younger than compulsory school age and have impaired hearing, eight pupils;

(b) in a class for pupils who are blind, for pupils who are deaf, for pupils who have developmental disabilities, or for pupils with speech and language disorders, ten pupils;

(c) in a class for pupils who are hard of hearing, for pupils with limited vision, or for pupils with orthopaedic or other physical handicaps, twelve pupils;



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- (d) in a class for pupils who have mild intellectual disabilities, twelve pupils in the primary division and sixteen pupils in the junior and intermediate divisions;
- (e) in an elementary school class for pupils who are gifted,
- (i) twenty pupils, if the class consists only of pupils in the primary division,
- (ii) twenty-three pupils, if the class includes at least one pupil in the primary division and at least one pupil in the junior division or intermediate division, and
- (iii) twenty-five pupils, if the class consists only of pupils in the junior division or intermediate division;
- (f) in a class for aphasic or autistic pupils, or for pupils with multiple handicaps for whom no one handicap is dominant, six pupils; and
- (g) on and after the 1st day of September, 1982, in a class for exceptional pupils consisting of pupils with different exceptionalities, sixteen pupils. R.R.O. 1990, Reg. 298, s. 31; O. Reg. 191/04, s. 10; O. Reg. 29/08, s. 4; O. Reg. 297/08, s. 1.

Full day Junior Kindergarten and Kindergarten, O Reg 224/10
<<http://canlii.ca/t/8n5r#sec4>>, retrieved on 2021-01-15

- 3. (1)** A board is not required to designate a position in a class that includes a junior kindergarten pupil or a kindergarten pupil as a position requiring an early childhood educator or to appoint an early childhood educator to such a position if the following conditions apply:
1. The class has fewer than 16 pupils who are enrolled in junior kindergarten or kindergarten.
 2. If the class is in a school that does not offer French immersion, none of the classes in the school that include a junior kindergarten pupil or kindergarten pupil have more than 30 pupils.
 3. If the class is an English class in a school that offers French immersion, none of the English classes in the school that include a junior kindergarten or kindergarten pupil have more than 30 pupils.



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4. If the class is a French immersion class, none of the French immersion classes in the school that include a junior kindergarten pupil or kindergarten pupil have more than 30 pupils. O. Reg. 251/17, s. 1 (1).

(1.1) The date selected by the board for the purposes of subsection (1) must be the same date that is selected for the purposes of [section 3](#) of [Ontario Regulation 132/12](#) (Class Size) made under the Act in relation to determining class sizes in elementary schools. O. Reg. 133/12, s. 1 (2).

(2) Except in the circumstances described in subsection (3), subsection (1) applies to only one class in each school of the board. O. Reg. 224/10, s. 3 (2); O. Reg. 251/17, s. 1 (2).

(3) In each school of the board that offers French immersion in junior kindergarten or kindergarten, subsection (1) applies to,

(a) only one English class; and

(b) only one French immersion class. O. Reg. 251/17, s. 1 (3).

kw/cope491