



# **Education**

**Know your rights! — Guide to legal information**

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# Important

The information in this guide is of a general nature, and should not be taken as legal advice. If you require information about a specific legal issue, you should **contact a lawyer or a legal aid clinic**.

## Acknowledgements

**CNIB** wants to thank the volunteers and numerous contributors to this guide to legal information. For additional information about the **Know your rights!** project, please go at [cnib.ca/en/support-us/advocate/quebec-advocacy/know-your-rights](https://cnib.ca/en/support-us/advocate/quebec-advocacy/know-your-rights).

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This document covers the area of **education**. A number of **general** and **specific** issues are addressed. The document also includes some of the laws and sections in them that will be useful to you in **standing up for your rights** in regard to housing whenever they are not respected.

## General issues

This section covers general issues about rights when it comes to housing, as well as specific recourses available to you. For information about [general recourses](#), you can consult the document entitled [Advocacy and Essential Legal Information](#).

## What are my rights in regard to education in Quebec?

### Internationally

The **Convention on the Rights of Persons with Disabilities**<sup>1</sup>, was signed by Canada in 2010.

**Article 24** of the **Convention** covers **education**. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning (paragraph 1) to learn life and social development skills to facilitate their full and equal participation in education and as members of the community (paragraph 3).

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<sup>1</sup> This Convention was adopted by the United Nations on **December 13, 2006**, and ratified by Canada on **March 11, 2010** and by Quebec on **March 10, 2010**. For comments on this Convention, see V. A. Boujeka, **La convention des Nations unies relative aux droits des personnes handicapées et son protocole facultatif**, RDSS sept-oct. 2007, n° 5, p. 799.

Paragraphs 2 and 3 of **article 24** provide as follows:

“2. In realizing this right, States Parties shall ensure that:

- Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- Reasonable accommodation of the individual’s requirements is provided;
- Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
- (...)

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

- Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
- (...)
- Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development. »

## Nationally

At the national level, education rights stem from the **Constitution of Canada**. In Quebec, every person is entitled elementary and secondary school instruction under the **Education Act**. The notion of inclusion is addressed in **section 10** of Quebec's **Charter of human rights and freedoms**.

The **Canadian Constitution** gives Provinces the power to make laws under which they can protect everyone's rights. In Quebec, public education is addressed in the **Education Act**.

It is important to **start with the Canadian Charter**, which is applicable provincially and federally in regard to human rights generally and in challenges against the federal and provincial governments. **Quebec's Charter** is applicable provincially in challenges involving the provincial government and in private matters. In regard to education, the authority on rights is the **Education Act**.

**Section 10** of **Quebec's Charter** provides as follows:

"Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap."

**Quebec's Charter**, annotated on the [CAIJ](#) (Courtier en information juridique) website, contains the following references under education and municipal services:

"[translation] Once the decision has been made to admit a disabled student into a regular class, a school board cannot invoke excessive constraint to avoid providing the required accommodation, including the permanent presence in the classroom of a teacher to accompany the student. » See [Commission des droits de la personne et des droits de la jeunesse c. Commission scolaire de Montréal, J. E. 2014-1219 \(T.D.P.\)](#).

“[translation] An organization such as a municipality does not have the right to refuse any registration mechanism when, due to a physical disability, a resident cannot take notes in the usual manner.” See [Morel c. Corporation de Saint-Sylvestre, \(1987\) R. L. 242; \(1987\) D.L.Q. 391 \(C.A.\); 1987 CanLII 630 \(QC CA\)](#).

The **Education Act** recognizes the principle of school integration in regard to public education. A number of rules and measures stem from it, including the **Policy on Special Education** and the **action plan to promote success for students with handicaps, social maladjustments or learning disabilities** ([Organization of Educational Services for At-Risk Students and Students with Handicaps, Social Maladjustments or Learning Difficulties](#))<sup>2</sup>.

Section 1 of the **Education Act** provides as follows: “Every person is **entitled to the preschool education services and elementary and secondary school instructional services** provided for by this Act and by the basic school regulation made by the Government under section 447, from the first day of the school calendar in the school year in which he attains the age of admission to the last day of the school calendar in the school year in which he attains 18 years of age, or 21 years of age in the case of a handicapped person within the meaning of the **Act to secure handicapped persons in the exercise of their rights with a view to achieving social, school and workplace integration**.

Every person is also entitled to other educational services, student services and special educational services provided for by this Act and the basic school regulation referred to in the first paragraph and to the educational services prescribed by the basis vocational training regulation established

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<sup>2</sup> **Convention on the Rights of Persons with Disabilities – First Report of Canada**, p. 36, para. 195  
<http://www.ccdonline.ca/media/international/Convention%20on%20the%20Rights%20of%20Persons%20with%20Disabilities%20-%20First%20Report%20of%20Canada.pdf>

by the Government under section 448, within the scope of the programs offered by the school service centre.

The age of admission to preschool education is 5 years on or before the date prescribed by the basic school regulation, the age of admission to elementary school is 6 years on or before the same date.” (our bold)

## **How can I stand up for my rights in regard to education?**

Please note that there are also [general recourses](#). You will find them in the document entitled [Advocacy and Essential Legal Information](#).

There are **two** recourses specific to education, as follows.

### **1. School board**

In regard to education, you can file a complaint with the **school board**. Under the **Education Act**, every school is required to set up a system for receiving and assessing complaints from individuals who are dissatisfied with a situation or a decision. This complaints process must be available on the school board’s website.

The following are the pertinent sections of the **Education Act** in this regard:

- **Section 96.14:** The principal is required to establish an individualized education plan adapted to the needs of the student. The plan must state that recourse to the school service centre’s complaint examination procedure provided for in section 220.2 is an option if the parent or student is not satisfied.
- **Section 220.2, paragraph 1:** Every school service centre shall establish by by-law a procedure for the examination of complaints related to its functions.



## 2. Student Ombudsman

A complainant (child or parent) who is dissatisfied with the handling of the complaint may consult the Student Ombudsman, who will be able to reassess the complaint (section 220.2, paragraph 2, **Education Act**).

## Specific issues

This section covers specific situations and certain rights in regard to **education** that can be trampled.

### **My child, who is visually impaired, is about to start school. What can I do to make sure that accommodations will be made?**

If your child is starting school, he or she is entitled to several resources and accommodations to ensure adequate integration. Your **school board** is obligated to accommodate your child because he or she has the right to equality.

Under section 45 of the **Act to secure handicapped persons in the exercise of their rights with a view to achieving social, school and workplace integration**, if your child lives in Quebec, you have the option of requesting the **Office des personnes handicapées du Québec** to prepare a service program to facilitate his or her social, school and workplace integration.

For a child in primary or secondary school, such a service program could include both a social integration and a school program. The **Office** is

required to respect the child's free choice, that is to say take into account the child's wishes in regard to the content of the service program.

In designing your child's service program, it is useful for the **school board** to conduct a personalized assessment and to delineate the specific needs related to his or her disability. This will then be used to determine all of the accommodations required for your child to have equal access to education and all the associated services. You may wish to consult **Commission scolaire des Phares c. Commission des droits de la personne et des droits de la jeunesse**, paragraph 56.

## **The school board has implemented an accommodation plan to support my child's sight loss. I am not satisfied with the school board's approach in terms of the accommodation. What can I do?**

Your child is entitled to a personalized assessment of his or her abilities and needs (**Commission scolaire des Phares 1**). The assessment should prioritize your child's best interests (see [Eaton c. Conseil scolaire du comté de Brant](#)). Although full integration in the classroom may be the standard, it is not mandatory if it is determined that it is not in the child's best interests (**Commission scolaire des Phares 2**, paragraphs 158-159).

If you are dissatisfied with the decision, you can request a review or file a complaint (**Commission scolaire des Phares 3**, paragraph 9). However, some schools are unable to satisfactorily accommodate the needs of certain children. Under section 220.2 of the **Education Act**, every school board is required to establish a procedure for the examination of complaints related to its functions. Thus, **you have the right**:

- to be accompanied by the person of your choice at any stage of the complaint examination procedure (**Regulation respecting the complaint examination procedure established by a school service centre**, section 1, paragraph 3);
- receive assistance in making your complaint (**Regulation respecting the complaint examination procedure established by a school service centre**, section 3); and
- confidentiality, and the school board must take the necessary measures to prevent any form of retaliation against you (**Regulation respecting the complaint examination procedure established by a school service centre**, section 4).

Every school board sets up its own specific procedure. Thus, you should check with the school board before you proceed with filing a formal complaint.

If you are dissatisfied with the handling of your complaint, you have the right to call on the **Student Ombudsman**, who must, within 30 days after receiving the complaint, give the school service centre's board of directors an opinion on the merits of the complaint and recommend any appropriate corrective measures (**Education Act**, section 220.2).

The council of commissioners is obligated to inform you of the action it intends to take in respect of any recommendation of the Student Ombudsman (**Regulation respecting the complaint examination procedure established by a school service centre**, section 1, paragraph 7).

Nonetheless, certain factors can complicate the resolution process. There can be up to four or five steps involved before a complaint reaches the Student Ombudsman. Not every Student Ombudsman has the same level of expertise or feels sufficiently competent to make a precedent-setting decision<sup>3</sup>.

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<sup>3</sup> Rapport du **Protecteur du citoyen**, p 2.

If this process does not work, you can [file a complaint with the Commission des droits de la personne et des droits de la jeunesse](#). Once it receives the complaint, the Commission will decide whether it will intervene. This can lead to an amicable resolution or to a civil procedure<sup>4</sup>.

It is important to find out what your child's rights are under Quebec's **Charter of human rights and freedoms** and the **Canadian Charter of Rights and Freedoms** to ensure that they are upheld throughout his or her time in school.

## **My child's school sent me information that is not accessible. Because of my sight loss, I am unable to read it. What can I do?**

You can ask the school to provide you the information in accessible format.

Under Quebec's **Charter of human rights and freedoms**, in particular the **right to equality**, your child's school must provide **reasonable accommodation** due to your disability, if it can do so. Disabled parents have the right to request that all information provided by their child's school be provided in a format that is accessible to them.

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<sup>4</sup> Filing a complaint with the **Commission des droits de la personne et des droits de la jeunesse**: <https://www.cdpdj.qc.ca/en/file-a-complaint/i-want-to/file-complaint-discrimination-or-harassment>

## **I have been admitted to a postsecondary institution, but I do not know what steps to take to ensure that my sight loss is taken into account. What can I do?**

Every educational institution in Quebec, including cégeps and universities, is **obligated to offer disabled students reasonable accommodation** to protect their rights under Quebec's **Charter of human rights and freedoms**. Moreover, these institutions often have their own policy in that regard.

In order to obtain accommodation measures in a postsecondary institution, you must contact the staff in charge of adapted services. They will help you through the process of getting your needs assessed and preparing an education plan.

It is important to remember that **exemptions obtained in a secondary institution do not necessarily apply** in cégeps.

To obtain accommodations, you must [provide a professional diagnosis or assessment](#).

## **Despite my requests, I have not received the adaptation measures I need. What can I do?**

Every educational institution in Quebec is **obligated to offer disabled students reasonable accommodation** to protect their rights under section 10 of Quebec's **Charter of human rights and freedoms**.

Refusal to provide reasonable accommodation would amount to discrimination under that provision. In that case, you should file a complaint with the **Commission des droits de la personne et des droits de la jeunesse**. For additional information about this procedure, refer to the section above or to the document entitled [Advocacy and Essential Legal Information](#).

# When your rights are not respected, stand up for them!

We hope this guide will help you stand up for your rights as they relate to education. We believe that you are in the best position to defend your rights. When your rights are not respected, you have the right to stand up for them and to make sure that others **Know your Rights**.

**CNIB is here for you.** Since its inception in 1918, CNIB has undertaken a variety of advocacy initiatives to **break down barriers** for people who are blind and to **advocate for an inclusive society**.

Please feel free to contact us for referrals and to take advantage of our services.

[DroitsDevant@inca.ca](mailto:DroitsDevant@inca.ca)

**1 800 465-4622**

Visit the campaign website for information on other rights:

**[cnib.ca/en/support-us/advocate/quebec-advocacy/know-your-rights](http://cnib.ca/en/support-us/advocate/quebec-advocacy/know-your-rights)**

Join the conversation on social media by using the tagline:

**#KnowyourRights**

**Together, enforce the rights of blind people!**