

**ONTARIO REGIONAL OFFICE**

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## MEMORANDUM

**To:** Staff Representatives servicing school board locals  
**From:** School Board Sector Team  
**Date:** February 2, 2021  
**RE:** **Education Assistants working alone or with minimal supervision**

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Dear Sisters and Brothers:

We have been advised by some Staff Representatives and Local Presidents that certain school boards are requiring Education Assistants to report to schools during the shut down to work with special needs students independently. In other words, without a teacher present at the school with them. We believe that this is a violation of the *Education Act* and could have Health and Safety implications.

While there are certainly some implications that affect all Boards and could be said to be central, there is no legal mechanism for the central body to use to ensure that the Boards are following the Statute. While the OSBCU did raise the issue at the last meeting with the CTA (Council of Trustees Association), it is ultimately up to the Locals to file any grievances and to engage their Health and Safety Committee in any concerns.

To provide some support for the Locals the Sector team has put together some grievance language that can be used. We have also highlighted some topics that should be discussed with the Health and Safety Committee.

### 1. Grievance

The primary reason why these grievances must be filed locally is that they will have to reference the Local management rights clause. Management rights must be exercised in accordance with the express provisions of the collective agreement but also with the implied statutory rights of the employees.

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**MARK HANCOCK**  
National President/Président national

**CHARLES FLEURY**  
National Secretary-Treasurer/Secrétaire-trésorier national

**BENOÎT BOUCHARD, PAUL FAORO, FRED HAHN, JUDY HENLEY, SHERRY HILLIER**  
General Vice-Presidents/Vice-présidences générales

The *Education Act* and its Regulations was found to concern the “work” of teachers by Arbitrator Abramsky in *OECTA v. Toronto Catholic District School Board*, 2005 CarswellOnt 5662. We take the position that it also concerns the “work” of other classifications such as DECE’s and EA’s whether specifically expressed or not. Therefore, a violation of the *Education Act* by a Board is also a violation of their management rights.

The sections of the *Education Act* that you should reference in your grievances are sections 264 of the *Act* as well as O. Reg 298.

Section 264 outlines the duties of a teacher which include teaching, co-operating, and discipline. Section 19 of O. Reg 298 states that only a teacher with a specific certificate of qualification can be assigned to teach a special education program.

We would point out that O. Reg 298 section 21(1) provides for an exception that allows for the appointment of unqualified individuals to act in the place of a teacher, however such appointment must be exercised only in the event of an emergency and only for 10 days. Furthermore, you may want to consider arguing that such appointment would be contrary to Section 19 of the Regulation since it requires a teacher with a specific certificate of qualification to teach special education.

The Grievance will be stronger if the Local has evidence that there were qualified teachers available to work in the classroom with the EAs that were required to work independently.

**Grievance:**

**Sections violated:** Article \_\_\_\_\_ (Management Rights), Section 264 of the Education Act, Section 19 of O. Reg 298 (Education Act) and any other collective agreement articles or statutory provisions that are relevant to the current grievance.

**Description of the Grievance:** The Union is grieving the Employer’s violation of their management rights and the *Education Act* when they assigned Education Assistants to work independently with special needs students.

The Employer failed to ensure that a Teacher was present during the instructional day for the special needs students at the Board and as such required the Education Assistants to assume a role they are not authorized or qualified to hold under the *Education Act*.

**Remedy:**

The Union is seeking an immediate cease and desist order regarding the

practice of assigning Education Assistants to work independently in the classroom.

The Union is also seeking compensation for any Education Assistant that was assigned to assume the role of the special education teacher equivalent to what would have been paid to that teacher.

Any other relief deemed appropriate.

## **2. Joint Health and Safety Committee**

As indicated above, it is the teacher that is the designated supervisor of a classroom, as such the locals should explore through their joint H&S committee what measures need to be taken to ensure that the designated supervisor be in the classroom. Existing safety plans have to be reassessed or new safety plans must be developed and implemented in light of the EA's being left alone with students. Consideration must be given as to whether or not an EA is able to summon immediate assistance when workplace violence is occurring or likely to occur.

The Local should ensure that the safety plans for the students can be followed as written. For example: where violent student's safety plan requires 2 adults present where 1 be a supervisor (teacher) then that teacher must be present at the school. The Local should also consider whether their EA's are at risk and bring any concerns to the JH&S committee or representative. For example: if an EA is working alone with a violent student without the means to summon immediate assistance then that would pose a safety risk.

The JH&S committee or representative is entitled to receive the results of a risk assessments, including the results of an assessment or reassessment into risks or workplace violence.

More information about safety plans and risk assessments for workplace violence see [Workplace violence in school boards: A guide to the law](#)