**Toronto District School Board Special Education Advisory Committee**

Draft #2 dated September 24, 2017

# Motion #6: TDSB Policy, Procedure and Practices on Excluding Students from School without Following Procedures for Suspension or Expulsion

## Background

At its February 6, 2017 meeting SEAC received a detailed presentation by the ARCH Disability Law Centre, raising concerns that school boards, including TDSB, are using "exclusions" (also called refusals to admit student) of students inappropriately, and that this disproportionately falls on students with special education needs. ARCH is a respected disability rights legal clinic under Legal Aid Ontario, which has served people with disabilities and their families since the late 1970s.

In such an "exclusion" or "refusal to admit", a school or principal may tell a student or their family to keep the student at home for a matter of hours, days, weeks, or longer, without following the legal safeguards required when a student is suspended or expelled from school.

ARCH told SEAC that it learned from a Freedom of Information application addressed to TDSB that TDSB did not provide and presumably therefore did not centrally collect statistics on how often such exclusions occur. ARCH expressed concerns (not limited to TDSB) for example, that a school may tell a family to keep a student with special education needs at home, either because proper accommodations have not yet been arranged at school, or because existing supports, such as a Special Needs Assistant, were away from work that day.

ARCH told SEAC that it finds that when ARCH lawyers intervene, these situations are more likely to be corrected. If not, families may not even be given reasons for the student's exclusion from school. Again, this referred to ARCH's experience in Ontario, not limited to TDSB.

This raises serious concerns. Such refusals to admit students with special education needs are the opposite of effective inclusion of students with special education needs. Students with special education needs should enjoy the same protections as all other students. Families of students with special education needs can be placed in a very vulnerable position, should this occur.

From TDSB staff updates to SEAC at its May and June 2017 meetings, it became apparent that TDSB then had no policy or formal procedure on when the "refusal to admit" power was to be used, nor any centralized process for tracking and reporting on the use of this power. TDSB needs to track information on when this occurs, and have in place proper policies to prevent inappropriate refusals to allow students with special education needs to come to school and take part in TDSB educational programming.

It is difficult to see why TDSB should ever need to use the "refusal to admit" authority. TDSB should simply use the existing powers to discipline, suspend or exclude students, where needed, with all their safeguards. This is clearly a "special education" issue, since the burden of these refusals to admit can fall disproportionately on students with special education needs

## Recommendations

SEAC therefore recommends:

To publicly account for and reform TDSB practices regarding the refusal to admit of students from TDSB School, with a particular emphasis on students with disabilities, TDSB should take these actions:

1. TDSB should not refuse to admit students with special education needs from school without complying with required procedures and family protections for suspensions or expulsions under the Education Act.

2. TDSB should regularly report to the trustees, SEAC and the public on:

a) How often refusals to admit occur, and

b) How TDSB monitors this practice.

3. TDSB should promptly develop, implement, monitor and publicly report on policies and procedures on when or if TDSB will refuse to admit a student, including students with special education needs to school. These should include a requirement that TDSB fully comply with the procedures and safeguards for a student's formal discipline or expulsion. These should include, for example:

a) Specifying the reasons that are permitted for a refusal to admit. A principal should be required to have first accessed and used the policy and procedures for student discipline, such as suspensions and expulsions, and should only resort to a consideration of a refusal to admit after doing so. After that, the principal should first consider a refusal to admit to the student's assigned class. Only if that is shown to be insufficient, should the principal consider a refusal to admit to the student's school, and arranging for the student to temporarily attend another school. Only if that is shown to be demonstrably insufficient should the principal consider a refusal to admit to any TDSB school.

b) Before deciding on any refusal to admit, a principal should be required to consider mitigating factors. It should not be permissible to refuse to admit a student due to a student's disability or a failure to accommodate the disability.

c) If a school principal or other TDSB official directs or asks a student with special education needs or their family to not come to school, or to leave school, the student and family should immediately be given a reason for this, in writing, and be advised of the duration, and be given TDSB's written policies and procedures on refusals to admit.

d) TDSB should establish a policy and process to ensure that a proper educational program is offered to the student while the child is not in school

e) Families should immediately be told that the student and family have a right to an immediate, fair hearing on the proposed refusal to admit;

f) Each principal should be required to immediately report to their superiors in writing whenever a student with special education needs is to be refused admission to school, including the student's name, the reason for the exclusion, the intended duration of the exclusion, and the substitute educational programming that will be provided to the student while excluded from school. The written approval of the principal's supervisor should be required before the refusal to admit can go into effect. TDSB should centrally collect these reports, and make public on a quarterly basis the numbers, reasons and duration, including quarterly reports to TDSB trustees and to SEAC.

g) TDSB should internally review the appropriateness of each exclusion when it occurs, with a special focus on what has been done to put in place any needed educational accommodations at school. The family and student should be given a fair chance to participant in this review. The results of the review should be reported to the family in writing, and to the principal's supervisor. A review should also be held every 30 days after the refusal to admit.

h) TDSB should set a maximum time for a permissible refusal to admit.

i) TDSB should provide an internal appeal for any refusal to admit, at the request of the student with special education needs or their family. The appeal process should be very prompt, transparent and impartial. It should consider mitigating factors such as whether the behaviour giving rise to the refusal to admit is disability-related, and the TDSB's duty to accommodate any disability-related needs.

j) TDSB should put in place an accelerated process to find or free up funds to put in place needed disability-related accommodations to enable the student to return to school.

4. The TDSB policy and procedures regarding refusals to admit should be posted in an accessible format prominently on TDSB's website and broadly communicated to parents and families, and especially to families whose child may be subject to a refusal to admit.

5. One year after TDSB's new policies and procedures on refusals to admit go into affect, TDSB should conduct a review of the effectiveness of these policies and procedures, and should update TDSB trustees and the public, including SEAC, on whether further reforms are needed.