**Toronto District School Board Special Education Advisory Committee (SEAC)**

**Motion #6 Need for TDSB to Establish A Policy on "Refusals to Admit"**

**Draft #3 November 26, 2017**

## BACKGROUND

At its February 2017 meeting, SEAC received a presentation by the ARCH Disability Law Centre. It raised concerns that school boards, including TDSB, at times inappropriately use "refusals to admit" students to school. This disproportionately happens to students with disabilities. A school or principal may tell a their family to keep the student at home for hours, days, or longer, without giving reasons or following safeguards required when a student is suspended or expelled.

ARCH told SEAC it learned that TDSB did not then centrally collect statistics on how often these exclusions occur. ARCH expressed concerns (not limited to TDSB) for example, that a school may tell a family to keep a student with a disability at home, either because proper accommodations have not yet been arranged at school, or because supports, such as a Special Needs Assistant, were away. ARCH said when ARCH lawyers intervene, these situations are more likely corrected (again, not limited to TDSB).

TDSB staff made presentations to SEAC at its May, June and November 2017 meetings. TDSB staff said TDSB has no policy on the use of refusals to admit. Practices can vary from school to school. TDSB has a procedure (not a policy) regarding appeals from a refusal to admit. TDSB staff have been working on draft reforms after SEAC raised this.

## RECOMMENDATIONS

SEAC recommends as follows:

### TDSB Needs a Refusal to Admit Policy

1. TDSB should promptly adopt a comprehensive, mandatory policy on when TDSB will exercise any power to refuse to admit a student to school.

2. The "refusal to admit" policy should recognize that this issue has disproportionately affected students with special education needs and all students with disabilities.

### What is a Refusal to Admit?

3. The refusal to admit policy should have no loopholes that would let a principal or teacher exclude a student informally without complying with the policy.

1. A "refusal to admit" should include any time TDSB formally or informally asks or directs that a student not come to school, or that he or she be taken home from school, whether in writing or in a discussion.
2. A refusal to admit includes a TDSB request or direction that a student only come to school for part of the regular school day.
3. A refusal to admit does not include a situation where a family requests that a student be absent from school for all or part of a school day, but TDSB is willing to let the student be at school.

### Ensuring Alternative Education to Student Whom TDSB Refuses to Admit to School

4. The "refusal to admit" policy should require TDSB to ensure that a student, excluded from school, is provided an equivalent and sufficient educational program, and that TDSB keeps record of and publicly accounts for its doing so.

### When a Refusal to Admit is Allowed

5. The policy should specifically spell out the situations when TDSB can consider refusing to admit a student, including:

1. A refusal to admit should only be imposed when necessary to protect health and safety.
2. A refusal to admit should go no further and last no longer than is necessary.
3. A principal should only resort to a refusal to admit if he or she can demonstrate that the student presents an imminent risk to health or safety which cannot be addressed by lesser measures, and where a refusal to admit is necessary, having first explored and rejected the option of a suspension.
4. If a refusal to admit is to take place, the first resort should be to exclude the student from a specific class, accommodating that student in another class. Only if that can't be sufficient, should a principle consider excluding the student from that school, accommodating the student at another school. TDSB should only refuse to admit a student from any and all schools if it is impossible to accommodate them at any other school.
5. The policy should give clear examples of the circumstances when a refusal to admit is permitted, and when it is not permitted.
6. A refusal to admit should not be allowed to last more than five consecutive school days.
7. TDSB must justify the refusal to admit. It should not be for the student or his or her family to justify why the student should be allowed to stay at school.
8. When TDSB staff decide whether to refuse to admit a student, they should take into account all mitigating considerations when deciding whether to suspend or expel a student.
9. TDSB may not refuse to admit a student with a disability on the ground that TDSB staff believe they cannot accommodate the student's needs, e.g. because staff is absent.

### Extension of Refusal to Admit

6. The policy should set these terms:

1. If after a refusal to admit expires, TDSB wants to extend it, TDSB staff must justify it.
2. The student's family need not prove why the student should be allowed to return.
3. An extension of a refusal to admit must first consider excluding the student from a single class, and then the option of excluding the student from that school, and only as a last resort, excluding the student from all schools.
4. An extension should not be permitted if TDSB has not put in place an effective alternative option for the student to receive education.

### Fair Procedure

8. The "refusal to admit" policy should set out fair procedures that TDSB must follow when it refusing to admit a student. These procedures should ensure accountability of TDSB and its employees, including:

1. A student and their families should have all the procedural protections that are required when TDSB is going to impose discipline such as a suspension or expulsion.
2. The principal should be required to notify his or her superintendent in writing that he or she is going to refuse to admit a student, and the reasons for this.
3. The prior review and approval of the superintendent should be required. If it is an emergency, then the superintendent should be required to review and approve this decision as quickly afterwards as possible, or else the refusal to admit should be terminated.
4. The superintendent should independently assess whether TDSB has sufficient grounds to refuse to admit, and has met all the requirements of the TDSB refusal to admit policy (including ensuring alternative education programming is in place for the student).
5. The principal must immediately notify the student and his or her family in writing of the refusal to admit, the reasons for it, and the duration. That should include outlining steps TDSB has taken or will be taking to expedite a student’s return to school and provide an expected timeline for the completion of these steps.
6. The principal must immediately tell the student and the family, in clear and plain language, in writing, what a refusal to admit is, its duration, the reasons for it, the steps TDSB is taking to expedite the student’s return to school and time lines for those steps, the TDSB's process for reviewing that decision, and the family's right to appeal it (including how to use that right of appeal). This should be provided in a language that the family speaks.
7. These procedures must again be followed any time TDSB extends a refusal to admit.
8. A refusal to admit cannot be extended for an accumulated total of more than 15 days (within a surrounding 30 day period) without the independent review and written approval of the executive superintendent of the Learning Centre where that student ordinarily attends.
9. No refusal to admit may be extended for an accumulated total of more than 20 days (within a surrounding 45 day period) without the independent review and written approval of the Director of Education.

### Appeals

9. The refusal to admit policy should include a fair and prompt appeal process which includes:

1. The appeal should be to officials at TDSB who had no involvement with the initial decision to refuse to admit or any extensions of it.
2. TDSB should promptly inform the student and family about how to start an appeal, who is involved in the appeal, the procedures for the appeal, that the student and family can present reports, support people or experts or any other information they wish, and can have a representative, either a lawyer or other person, to speak for them or assist them with the appeal.
3. The appeal should include an in-person meeting with the student and family.
4. The appeal should be heard and decided very promptly.
5. On the appeal, the TDSB should have the burden to prove that the refusal to admit was justified, that it went no further and lasted no longer than was necessary, and that proper alternative education programming was provided or offered.
6. A decision on the appeal should promptly be provided in writing with reasons.

### Accountability and Transparency of TDSB's Use of the Refusal to Admit

10. The policy should include:

1. TDSB should set a specific code for marking attendance for a student who is away from school for all or part of a day due to a refusal to admit.
2. Each principal should be required to immediately report to their superiors in writing whenever a student is excluded from school, including the student's name, whether the student has special education needs or otherwise has a disability, 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.
3. TDSB should centrally collect these reports.
4. TDSB should make public quarterly aggregated data (without any names or identifying information) on the number of refusals to admit, reasons for them, percentage that involve , students with special education needs or any kind of disability, the number of days missed from school, and measures to provide alternative education during refusals to admit.

### Funding for Emergency Disability Accommodation Needs

11. To help ensure that refusals to admit are not used due to a failure to accommodate a student's disability, the TDSB should create an emergency fund for accelerating education disability accommodations needed to facilitate a student's remaining in or promptly returning to school, in connection with an actual or contemplated refusal to admit.

### Interim Safeguards

12. Starting immediately, and until a new "refusal to admit" policy is approved, TDSB should require that any formal or informal refusal to admit a student must be in writing, with reasons for it, and with the family being told of their right to appeal under the existing TDSB appeal procedure. TDSB should require that any refusals to admit during this period be centrally reported in writing, with statistics reported quarterly to the Board, the public and SEAC.