Toronto District School Board Special Education Advisory Committee

Draft #1 dated March 15, 2017

# Motion #6: TDSB Policy 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" 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" 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 "exclusions" of 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.

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.

## Recommendations

SEAC therefore recommends as follows:

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

1. TDSB should not exclude 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 report to the trustees, SEAC and the public on:

a) what, if any, legal basis it has for excluding students with special education needs from school, on a short term or long term basis, without complying with suspension/expulsion procedures and safeguards;

b) how often this has occurred in the past, and

c) how TDSB monitors this practice.

3. TDSB should develop, implement, monitor and publicly report on policies on when or if students with special education needs can be "excluded" from attending school. These should include a requirement that TDSB fully comply with the procedures and safeguards for a student's formal discipline or expulsion. These procedures should include, for example:

a) listing the reasons that are permitted for an exclusion. A principal should be required to consider mitigating factors. Exclusion due to a student's disability or a failure to accommodate the disability should not be permitted.

b) 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.

c) TDSB should establish a policy and process to ensure that some kind of educational program is offered to the student while the child is not in school

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

e) Each principal should be required to immediately report to their superiors in writing whenever a student with special education needs is excluded from 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. TDSB should centrally collect these reports, and make public on a quarterly basis the numbers, reasons and duration, including quarterly reports to SEAC.

f) 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 exclusion.

g) TDSB should set a maximum time for a permissible exclusion.

h) TDSB should provide an internal appeal for any exclusion, 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 exclusion is disability-related, and the TDSB's duty to accommodate any disability-related needs.

i) 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.