

Disability Advocates Call for Action Limiting When Principals Can Exclude Students from School

For Immediate Release

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At a news conference in the Queen's Park Media Studio on Wednesday Jan. 30 at 10:30 a.m., disability advocates will unite to demand that the Ford Government rein in the sweeping power of school principals to exclude a student from school. The Ford Government has so far announced nothing on this issue. It hasn't answered the Ontario Autism Coalition's [December 13, 2018 letter](#) to Education Minister Lisa Thompson, which asks the minister to meet to discuss exclusions. It has also not publicly responded to recent media attention focusing on this issue. See e.g. the [Globe and Mail](#).

"School principals have the full and unmonitored discretion to exclude students from school. It's an especially unfair barrier for students with disabilities, who are often forced to stay home because the school is failing to provide appropriate supports," said Laura Kirby-McIntosh, President of the [Ontario Autism Coalition](#), a non-profit political advocacy group for people with autism and their families. The principal just has to think, that the student "would in the principal's judgment be detrimental to the physical or mental well-being of the pupils;" (Education Act s. 265)

"In over 5,000 Ontario schools, each principal is allowed to be a law unto themselves. They are not required to keep track of how many students they exclude, or for how long, or for what reason, or to report this information to anyone. They don't have to tell the student and their family the reason for their exclusion from school or to advise them of their right to appeal," said David Lepofsky, visiting professor at Osgoode Hall Law School and chair of the non-partisan [AODA Alliance](#) (which campaigns for disability accessibility, including in Ontario's education system.)

"Many families have contacted ARCH Disability Law Centre when their child has been denied access to school via formal exclusions or otherwise. It is not unusual in these circumstances that the ultimate problem is that the school has failed to meet its duty to accommodate the student's disability. With legal assistance, students are more likely to receive appropriate accommodations to facilitate their return to school. Without this assistance, there are many cases where students have endured many months of exclusion," said Luke Reid, Staff Lawyer at ARCH.

At the news conference, the [AODA Alliance](#) and [Ontario Autism Coalition](#) will jointly call on the Ford Government to take the following immediate actions:

1. The Minister of Education should now convene a **summit** of key stakeholders to get input on legislation and policy changes to fix this mess.
2. In the interim, the Minister of Education should immediately issue a policy direction to school boards, imposing restrictions on when and how a principal may exclude a student from school.

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Background Facts

* There are at least 340,000 students with special education needs in Ontario or 1 out of every 6 students in Ontario-funded schools. That figure does not include all students with disabilities. Therefore at least one-third of a million students with disabilities are exposed to the principal's arbitrary power to refuse to admit them to school.

* Section 265 of the Education Act permits each school principal to refuse to admit 'a person whose presence in the school or classroom would in the principal's judgment be detrimental to the physical or mental well-being of the pupils.'

* In the absence of proper oversight of school boards by the Ministry of Education it is hard to find out whether a school board has a policy on the use of the principal's power to exclude a student from school, or how often students are excluded from school, or for how long they are kept out. The AODA Alliance has a team of Osgoode Hall Law School law students now surveying the boards and their websites.

* It is wrong to confuse the issue of exclusions from school with the issue of when students with special education needs should be included in the regular classroom. When a principal refuses to admit a student to school, that means that the student is entirely shut out from school, pure and simple. They are excluded from any and all classrooms, be it inclusion in the regular classroom or taking part in a separate or special education class. Any discussion over whether a student should be placed in the regular classroom (inclusion or integration) or in a special education classroom cannot even begin when the principal forbids that student from even coming to school at all.

* In January 2018, the [Special Education Advisory Committee](#) of the Toronto District School Board submitted a [detailed recommendation](#) to the school board trustees. It recommended that the TDSB place clear limits on when a principal can refuse to admit a student to school.

* One year later, the TDSB circulated a draft procedure on exclusions from school, which incorporates some of SEAC's recommendations.

* In a January 7, 2019, article, the Globe and Mail article reported that:

"A Globe and Mail analysis found that families with children who have intellectual and developmental disabilities are increasingly being asked to pick up kids early, start the school day later or simply keep them home for days. Most school districts don't formally track these exclusions or shortened days. Informally, parent and advocacy groups have documented the problem and have seen a rise in the incidence of these events."

* "People for Education, an Ontario advocacy group, has reported [an increase](#) in the number of elementary and secondary school principals who report recommending a special-education student stay home for at least part of a day. The organization found 58 per cent of elementary

school heads and 48 per cent of high school principals made the request, up from 48 per cent and 40 per cent, respectively, in 2014."

* A recent [report](#) by ARCH Disability Law Centre and its partners found that more than half of all students with intellectual disabilities experienced a "shortened day," losing on average, almost 4 hours out of a 6 hour school day. Almost half of all parents surveyed reported that they had to keep their child home at one time or another as a result of accommodation issues. Finally, the report stated that 25% of parents reported that they had been "told" not to bring their child to school that day, with many of them stating that no reasons were given or that when they were given, they often related to staffing shortages or other accommodation issues.

* The Ministry of Education's policy directive to school boards PPM-145, available at <http://www.edu.gov.on.ca/extra/eng/ppm/145.pdf> states:

"In Part X of the Education Act, clause 265(1)(m) permits a principal to "refuse to admit" to the school or to a class someone whose presence in the school would be "detrimental to the physical or mental well-being of the pupils". This provision is frequently referred to as the "exclusion provision." **Exclusion is not to be used as a form of discipline.** If a principal does decide that it is necessary to exclude a student from the school, the principal is expected to notify the student's parents of the exclusion as soon as possible in the circumstances, and to inform them of their right to appeal under clause 265(1)(m)."

* Last September, the Ontario Human Rights Commission released a [policy on accessible education for students with disabilities](#). Its recommendations to the Ontario Government included, among other things:

9. Identify and end the practice of exclusion wherein principals ask parents to keep primary and secondary students with disabilities home from school for part or all of the school day (and the role that an improper use of section 265(1)(m) of the Education Act may be playing in this practice).

* The AODA Alliance survey of school boards, still in progress, has yielded the following partial and interim results so far:

* Over 80% of school boards have been contacted. Based on results so far, only about 10% of boards, or 9 boards, have provided a policy that addresses refusals to admit. Four school boards told the AODA Alliance that they wouldn't say if they had a policy until research approval was obtained from a Research Advisory Committee.

* Before the 2018 Ontario election, a Government-appointed committee was investigating disability barriers in Ontario's school system, in order to recommend reforms under the Accessibility for Ontarians with Disabilities Act. AODA Alliance Chair David Lepofsky is a member of the Government-appointed K-12 Education Standards Development Committee. He planned to put the problem of exclusions from school on that committee's agenda. However, the

work of that committee has been frozen for the past 7 months in the wake of last June's Ontario election. This is so despite the fact that the Conservative Party, while in opposition, had demanded that the former Ontario Government establish that very committee. For more on that issue, visit www.aodaalliance.org/education

* If each school board used a unique attendance code to mark the absence of a student due to the principal's refusing to admit the student to school, school boards and the Ontario Government would have instant access to comprehensive data on the amount of time that students are kept from attending school on this ground. However, the province does not direct that a unique attendance code be used for that purpose. The Ministry of Education's policy direction entitled "[Enrolment Register Instructions for Elementary and Secondary Schools](#)" for 2018-2019 states the following on the duty of school boards to keep records on the refusal to admit a student to school: (which, as far as we have ascertained, is not provincially monitored and enforced)

Excluded Pupils

Pupils excluded under clause 265(1)(m) of the Education Act should not be demitted from the enrolment register as the school board is actively working to re-integrate the pupil back into the education system.

During the exclusion period, the pupil's absence is recorded with a "G" on the Daily Attendance Record. An excluded student can remain on the enrolment register until the end of the current school year if the board is actively working to re-integrate the pupil back into the education system.

Retain the following for audit purposes:

- Documentation that shows the reason for the exclusion.
- Documentation of successful notification of exclusion and the response between the school board and the pupil (if the pupil is an adult) or the pupil's parent or guardian
- Documentation of the plan (signed by the principal) to re-integrate the pupil into the education system.
- Documentation of communication with other parties involved with re-engaging the pupil (e.g. social agencies.)
- Data on the number of students who have been excluded during the school year (including the name of the student, OEN, length of exclusion, and the reason for exclusion.)