Recommendations for Toronto District School Board:

Best Practices in Providing Access to Education for Students with Precarious Immigration Status
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No One Is Illegal - Toronto 2014
About Us: No One Is Illegal - Toronto

No One Is Illegal (Toronto) is a group of immigrants, refugees and allies who fight for the rights of all migrants to live with dignity and respect. We believe that granting citizenship to a privileged few is a part of racist immigration and border policies designed to exploit and marginalize migrants. We work to oppose these policies, as well as the international economic policies that create the conditions of poverty and war that force migration. At the same time, it is part of our ongoing work to support and build alliances with Indigenous peoples in their fight against colonialism, displacement and the ongoing occupation of their land.
Introduction

In May 2007, the TDSB issued Policy P.061 SCH, Students Without Legal Immigration Status, affirming its commitment to providing a safe and welcoming environment for students regardless of immigration status. While the policy is an important step towards ensuring that schools are adhering to Ontario’s Education Act and that all children in the TDSB’s jurisdiction are able to access public education without fear of being turned away or reported to immigration authorities, in practice students with precarious immigration status continue to face barriers to accessing public education. We have prepared this best practices guide to support the TDSB in ensuring that the promise of Access Without Fear\(^1\) is realized.

This guide identifies the major areas of concern that have arisen in our experience working with people with precarious immigration status and provides advice on the best practices to be adopted within each area. Section A addresses the preliminary issue of ensuring that TDSB staff are kept informed of the TDSB’s Access Without Fear policy. Section B addresses the issue of ensuring that communities are made sufficiently aware of the policy. Section C addresses barriers that have been encountered by people with precarious immigration status as they have attempted to register for school. Section D addresses the issue of fees charged to students with precarious immigration status and identifies the charging of fees as both contrary to best practices as well as Ontario’s human rights legislation.

Throughout this guide, we use the term “children with precarious status” to denote a variety of immigration circumstances. This includes children who are non-status, children who are temporary residents (with or without work or study permits) and children who are permanent residents or Canadian citizens but whose custodians lack full immigration status. Where a particular type of status is implicated, we specify.

A. TDSB MUST ADEQUATELY COMMUNICATE ITS ACCESS WITHOUT FEAR POLICY TO ALL TDSB EMPLOYEES

If employees are unaware of the policy and lack clear internal protocols, they may wrongfully turn away students and leave students vulnerable to immigration enforcement. TDSB should keep staff and management informed about the Access Without Fear policy and best practices, so that they understand their obligations. TDSB Policy P.061 SCH directive 4.1 states that the policy will be communicated to school administrators and office staff annually, and directive 4.8 states that instructions on implementing the policy will be provided in staff information materials, training and orientation programs.

Best Practice 1
TDSB should work alongside community partners to develop a video for electronic distribution to all TDSB staff. The video should explain the various ways in which people fall into precarious immigration status, the challenges that people with precarious status face in providing documentation when accessing schools, and the ways in which staff can accommodate people with precarious status. Digital tracking mechanisms should be used to ensure that staff watch the videos in their entirety.

Best Practice 2
A notice/memo should continue to be sent out annually to inform employees of the policy. This notice should be updated on an annual basis to reflect changes and improvements in best practices and to address any issues schools may be facing. It should be ensured that the communication has been received, read and understood by employees.

Best Practice 3
Protocol for preventing CBSA from entering schools (Directive 4.6) should be included in the existing school 911 guide, so that TDSB employees know what to do if CBSA arrives at a school and attempts to access students.
B. TDSB MUST ENGAGE IN PUBLIC EDUCATION AND COMMUNITY OUTREACH TO COMMUNICATE ITS ACCESS WITHOUT FEAR POLICY

Lack of awareness and confusion about the TDSB’s Access Without Fear policy can prevent children with precarious status from accessing schools. Children with precarious status and their families often assume that they are ineligible for public education, and confusion often results from misinformation circulated among community networks, a lack of English proficiency, and difficulty in accessing official information.

TDSB should develop a multi-lingual strategy that engages affected communities, to ensure that children with precarious status are aware of their access to schooling. It is imperative that the TDSB advertise their policy on an ongoing basis, as new students are arriving in Toronto throughout the year.

**Best Practice 4**
Every school throughout the TDSB should clearly display an official, multi-lingual poster/sign affirming that all students are entitled to admission at the school. The poster, available since 2007, ‘All children living in our community, including those without immigration status in Canada, are entitled to admission to our schools.’ should also state that CBSA is not permitted entry into schools and that information about immigration status will not be shared. Popular myths that the posters arouse fear or create stigma are unacceptable excuses for failure to enforce this practice.

**Best Practice 5**
The TDSB website should display a clear notice explaining the policy and affirming access to schooling. The website should contain clear instructions and steps to follow (including acceptable alternative documentation as detailed in the school policy) and who to contact in case they are experiencing difficulty in registering their child.

**Best Practice 6**
TDSB should send a memo to legal clinics affirming the TDSB’s Access Without Fear policy and the process for registering children with precarious status in school.

TDSB’s commitment to welcoming students without immigration status must go beyond the school reception desk, memos and notices on websites. Schools are at the centre of communities and play a primary role in creating healthy, happy and safe communities.

**Best Practice 7**
Notices should regularly be sent to ethnic media and community newspapers for publication, pointing out that schools are accessible to undocumented people.

**Best Practice 8**
Schools should be supported in engaging with local agencies and community associations to promote the policy and raise awareness about the issue.
C. TDSB MUST SIMPLIFY THE REGISTRATION PROCESS AND REVOKE OPERATIONAL PROCEDURE PR518

Unnecessarily complicated registration procedures and a lack of accountability among front line staff create additional barriers to accessing education for children and custodians who approach school boards seeking access to education. Every step in the registration process puts families in the distressing position of engaging with yet another state authority, which becomes more intimidating as families move upwards within the bureaucracy. Admission procedures developed in accordance with Directive 4.1 must simplify the registration process to account for the unique vulnerabilities of children with precarious status. Directives 4.1, 4.2 and 4.8 of Policy P.061 SCH are clear in saying that it is up to school staff to be familiar with the Access Without Fear policy, and not for families to search for a staff person who is.

Best Practice 9
Schools themselves should serve as the first and only point of necessary contact between people with precarious status and the TDSB. School staff should communicate directly with head office if they have questions rather than redirecting children and their custodians there in order to minimize intimidation, reduce confusion and simplify the registration process.

Despite these directives, TDSB Operational Procedure PR518 (last updated in 2009) remains in effect, which provides a complicated scheme which requires some people with precarious status to attend the International Programs Admission Office, others to attend the general Admissions Office, and allows others to register at the school itself. Operational Procedure PR518 poses unnecessary barriers to accessing education; the task of consulting other departments should be that of the registering school, and not that of the student or parent/guardian with precarious status.

Best Practice 10
Operational Procedure PR518 should be revoked, and any additional steps to registration should be either removed, or undertaken by staff at the registering school.

While Policy P.061 SCH provides important measures for ensuring that Access Without Fear becomes a reality, it does little to ensure the accountability of school staff who fail to implement the policy. The consequences of this failure range from students being denied admission to schools to school staff calling Canada Border Services Agency, leading to possible detention and deportation. A clear and accessible reporting system is an innovative and effective way for TDSB to monitor the operation of its Access Without Fear policy, and to increase staff’s sense of responsibility towards community members with precarious status.

Best Practice 11
A telephone hotline should be created and the number publicized along with community outreach materials (as discussed above, in ethnic and non-traditional media) for parents to obtain information on registering their children or whose attempts to register a child have been denied.

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D. TDSB MUST STOP CHARGING FEES TO FAMILIES WITH PRECARIOUS IMMIGRATION STATUS

The true “accessibility” of education to children with precarious status is questionable when these children are required to pay fees in order to attend an Ontario school. It is self-evident that charging fees for a basic education will disproportionately affect children and families of lesser economic means, and people with precarious immigration status are overrepresented in low-income populations in Canada.\(^2\) Given that both the *Education Act*\(^3\) and the *Immigration and Refugee Protection Act*\(^4\) provide both a right and a requirement for children to attend school regardless of immigration status, prohibitive costs not only pose a barrier to access for children with precarious status, but are also contrary to the purposes of these acts. Furthermore, Directive 4.7 of Policy P.061 SCH, which permits the collection of information concerning immigration status for the purpose of determining applicable fees, undermines the spirit of Access Without Fear as well as the rest of the policy itself.

**Best Practice 12**

The TDSB should decline to charge fees for children with precarious status and cease requesting documentation of immigration status for the purpose of charging fees.

The decision of a single Ontario school board not to charge fees to children with precarious status does not, however, address the systemic issues created by provisions in the *Education Act* which require school board to charge fees. As long as these provisions are on the books, they will serve as a barrier to full Access Without Fear.

**Best Practice 13**

The TDSB should advocate at the provincial level for the elimination of registration fees (and eliminate collection of ‘date of arrival’ information for ESL purposes) for children affected by precarious immigration status altogether. In particular, the school board should seek the repeal of s. 49(6) of the *Education Act*.

Beyond these best practices, however, we have serious concerns about the legality of provisions which erect barriers to a child’s ability to access a basic education on the basis of their citizenship or lack thereof. In England, there is no legal authorization or requirement to charge fees for children under the age of 16 to attend a public educational institution.\(^5\) In the United States, provisions charging fees to children with precarious immigration status were found to violate the “equal protection” clause of the 14\(^{th}\) Amendment, and were ultimately

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\(^3\) RSO 1990, c E.2 ['*Education Act*'].

\(^4\) SC 2001, c 27 ['*Immigration and Refugee Protection Act*'].

\(^5\) *Education Act* 1996, c 56.
struck down by the Supreme Court of the United States in the case of *Plyler v. Doe*.\(^6\) Viewing the fee-charging provisions of the *Education Act* and its regulations through the lens of Ontario’s *Human Rights Code*,\(^7\) it is clear that the fee-charging provisions discriminate against students and families on the basis of age, national origin and citizenship. They are also inconsistent with the purposes of the *Education Act* such that they cannot be saved as being necessary to a legitimate legislative purpose.

\(^7\) RSO 1990, c H.19 ['the *Human Rights Code*'].

**Recommendations For the Toronto District School Board:**

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Summary

Best practices for ensuring that all children can access schools regardless of immigration status are as follows:

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**Best Practice 2**
A notice/memo should continue to be sent out annually to inform employees of the policy. This notice should be updated on an annual basis to reflect changes and improvements in best practices and to address any issues schools may be facing. It should be ensured that the communication has been received, read and understood by employees.

**Best Practice 3**
Protocol for preventing CBSA from entering schools (Directive 4.6) should be included in the existing school 911 guide, so that TDSB employees know what to do if CBSA arrives at a school and attempts to access students.

**Best Practice 4**
Every school throughout the TDSB should clearly display an official, multi-lingual poster/sign affirming that all students are entitled to admission at the school. The poster, available since 2007, ‘All children living in our community, including those without immigration status in Canada, are entitled to admission to our schools.’ should also state that CBSA is not permitted entry into schools and that information about immigration status will not be shared. Popular myths that the posters arouse fear or create stigma are unacceptable excuses for failure to enforce this practice.

**Best Practice 5**
The TDSB website should display a clear notice explaining the policy and affirming access to schooling. The website should contain clear instructions and steps to follow (including acceptable alternative documentation as detailed in the school policy) and who to contact in case they are experiencing difficulty in registering their child.

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Best Practice 6
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Best Practice 9
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Best Practice 10
Operational Procedure PR518 should be revoked, and any additional steps to registration should be either removed, or undertaken by staff at the registering school.

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Best Practice 12
The TDSB should decline to charge fees for children with precarious status and cease requesting documentation of immigration status for the purpose of charging fees.

Best Practice 13
The TDSB should advocate at the provincial level for the elimination of registration fees (and eliminate collection of ‘date of arrival’ information for ESL purposes) for children affected by precarious immigration status altogether. In particular, the school board should seek the repeal of s. 49(6) of the Education Act in order to bring the Act into compliance with Ontario’s human rights legislation.
Title: STUDENTS WITHOUT LEGAL IMMIGRATION STATUS
Adopted: May 16, 2007
Revised: Review:

1.0 OBJECTIVE
To establish the Board's commitment to providing a safe and welcoming environment for its students regardless of immigration status

2.0 RESPONSIBILITY
Executive Officer, Student and Community Equity

3.0 POLICY
3.1. All children who are qualified to be resident pupils of the Board, including those who are without immigration status in Canada, shall be entitled to admission to school.

3.2. All children shall be welcomed, regardless of immigration status, and information about them or their families shall not be shared with Immigration authorities.

4.0 SPECIFIC DIRECTIVES
4.1. The policy and section 49.1 of the Education Act regarding the obligation to admit students without full immigration status will be communicated annually to all school administrators and school office staff and school will implement admission procedures in accordance with these requirements.

4.2. All staff involved in admission of students will be provided with orientation and training regarding the policy and implementation plan in order to promote expertise and the appropriate degree of sensitivity required concerning the admission of students without immigration status in Canada who find themselves in vulnerable circumstances.

4.3. Where there is a need to verify a student’s name, home address, or date of arrival in Canada, and where the usual documentation is not available, the Board will accept letters from lawyers, notary publics, and medical doctors confirming their personal knowledge of this information pertaining to the student.
4.4. Schools will continue to comply with current Ministry of Education requirements for verification of date of entry to Canada for all students whom ESL funding claims are made; staff will work with the Ministry of Education to establish a procedure for ESL grant eligibility for students without immigration verification documents, who would otherwise be counted for such grant claims.

4.5. The student registration form will be amended to specify that Date of Arrival information is required for ESL grant purposes only and that the absence of this information on this form will not prevent admission to school nor limit the student’s access to ESL school resources. The section of the form on Status in Canada will be deleted.

4.6. Schools will be instructed not to provide information about a student or his/her family to Immigration authorities, but rather to refer such requests to the Director of Education. Furthermore, the Director shall inform Immigration enforcement agents of the TDSB policy that opposes access to students while in school.

4.7. Schools will continue to require verification of temporary status or possession of a study permit from visitors to Canada when they apply for admission to a school in order to determine whether school fees are applicable.

4.8. The appropriate instructions for staff and public information materials concerning admission procedures will be revised to reflect the above policy and implementation plan; such revisions will also be included in all training and orientation programs for staff and community agencies who have responsibilities in this area.

4.9. The Director is authorized to issue operational procedures to implement this policy.

5.0 REFERENCE DOCUMENTS

Operational Procedure PR.518: Admission Eligibility Requirements