

Dear MPP,

Are you aware that if a child brings an illegal weapon or drugs into a school, they can be suspended for up to 20 days? Further, these children are entitled to full educational supports to ensure that their right to education is protected during suspension, as guaranteed under the Education Act. And, these children can only be suspended once for these offences.

If, however, a parent does not consent to disclosing private medical information about their children to Public Health, their children can be suspended with a rotating series of 20 day suspensions, often resulting in 60 – 90 days without access to education. Further, these children are denied their right to full educational supports during these serial suspensions. Their educational rights, guaranteed under the Education Act, are denied.

This is the situation affecting thousands of children in Ontario schools today.

To add insult to injury, Principals do not even tell parents which law the student is suspended under because the principal does not know. After suspension for refusing to disclose private medical information, the child can magically return to school. Yet nothing has changed. Nothing has been accomplished except the deprivation of their right to education, and the punishing of a family that exercised their right to medical privacy.

The Safe Schools Act prohibits suspensions for children under Grade 3, regardless of Education Act violations. Yet, children as young as age 4 are being repeatedly suspended when parents protect their right to medical privacy.

These illegal and harmful actions of government need to stop.

The Ontario government must seriously consider the psychological abuses and denial of access to education, being inflicted on our most vulnerable population, while their safety and well being is entrusted to the care of government schools. These illegal suspensions are not only harming our children, but they are severely undermining public trust in both government and healthcare.

Ontario children desperately need your help!

Attached are documents to explain the problem and the solution.

I trust you will assist us to find a solution.

Sincerely,

Parents of Ontario School Children

The Suspension of Ontario School Children is Unethical and Punitive

The Problem: The Immunization of School Pupils Act (ISPA) is being misused by public servants.

Your constituents are demanding an end to the violation by Public Health of their children's right to education and the right to privacy of medical information. The right to education is guaranteed under the Charter of Rights and Freedoms and Education Act. Privacy of health information is guaranteed under sections 7 of the Charter and Personal Health Information Privacy Act (PHIPA). The prohibition against coercive or compelled disclosure of personal information is guaranteed under s. 8 of the Charter and PHIPA.

The law is clear. The actions of government officials are in violation. When governments violate fundamental rights and freedoms, citizens lose trust in their governments. We demand a solution.

The Solution: The suspension of children for exercising their right to medical privacy must end.

Public servants purporting to act under the law must be held accountable. School suspension is governed by the Education Act, yet Public Health orders the student suspended. Either the School Board or the Health Board must assume jurisdiction to review the lawfulness of suspension of children from school for parental exercise of privacy. The denial of a right to appeal a school suspension is unethical and unconscionable.

PUBLIC HEALTH MUST CEASE SUSPENSIONS IMMEDIATELY!

Background

1. Our Children Have a Right to Education

The right to education in Canada is guaranteed under the Canadian Charter of Rights and Freedoms, the Education Act, and the Convention on the Rights of the Child (CRC). The Government of Canada ratified the CRC Convention on the Rights of the Child on December 12, 1991. Article 28 guarantees free compulsory primary education for all on the basis of equal opportunity. The Supreme Court of Canada ruled that Canadian laws must be interpreted in a manner to give effect to Convention rights.

<https://www.right-to-education.org/resource/convention-rights-child>

Regardless of these rights and guarantees, Public Health actions violate the right to education contrary to fundamental justice and the CRC. Our children are being suspended for exercising their legal right to protect private medical information. Suspension is an extraordinary measure and denies a child their right to education.

2. The Actions of Ontario Public Health Constitute Reprisal for Exercise of a Legal Right.

The demand for private health information without consent violates privacy rights under PHIPA. The suspension of student for express refusal to consent to disclosure is punitive. Agents working for Ontario Public Health are abusing their authority by coercing and compelling parents to disclose private health information without their free and informed consent. This is contrary to the rules under PHIPA which protects the privacy of health information and clearly entitles parents to withhold consent for disclosure

of their children medical information, including Public Health. PHIPA also prohibits compelled disclosure contrary to consent. Public Health agents are forcing parents to disclose personal health information by signing an exemption affidavit. It also gives authorization for the collection and storage of the child's private information. PHIPA section 18 (d) states the consent must not be coerced. **Yet, it is being coerced if the child's education is being leveraged in exchange for consent.**

PHIPA s. 18 (1) If this Act or any other Act requires the consent of an individual for the collection, use or disclosure of personal health information by a health information custodian, the consent must be a consent of the individual; be knowledgeable; relate to the information; and must not be obtained through deception or coercion. 2004, c. 3, Sched. A, s. 18 (1). PHIPA 18 (5)(b) further clarifies **knowledgeable** consent as: "that the individual may give or withhold consent. 2004, c. 3, Sched. A, s. 18 (5)." <https://www.ontario.ca/laws/statute/04p03#BK30>

3. No Access to a Remedy

If a parent does exercise their right to free and informed consent under PHIPA, Public Health agents punish the child by ordering suspension from school as an act of reprisal. This, in spite of the law that says a student can only be suspended from school under the Education Act. ISPA *does not* supersede the Education Act. Public Health agents abuse their power and misinform school principals and parents by claiming to suspend children under the ISPA.

Public Health does not have the authority to suspend a child from school. Further, Public Health misdirects parents to appeal the suspension to the HSARB tribunal. Yet, the Health Services Appeal and Review Board (HSARB) says it has no jurisdiction to remedy as suspensions are under the Education Act. If a parent files an appeal of suspension at the school board, they are denied the right to a hearing because the suspension was not under the Education Act. In this way parents are caught between two tribunals each denying responsibility for the suspension. Meanwhile children's rights to education are unlawfully removed without a remedy. The denial of the right to a fair hearing is contrary to the Supreme Court of Canada jurisprudence and the legal imperative that there can be "no right without a remedy," particularly when it comes to Constitutional rights.

4. Ontario Public Health Officials Usurping the Function of Parliament by assigning meaning and powers not plain and obvious under the ISPA.

Public Health officials can only exercise powers lawfully delegated. This is consistent with the Rule of Law that the state must act in accordance with the law. Statutory Interpretation of the provisions of ISPA require that words must be given their plain and ordinary meaning. Words cannot be obfuscated for Public Health to give itself a power it does not have.

If legislature intended for Public Health to be able to violate privacy of health information or right to education then this would be clear in the text, but it is not. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1581/index.do>

We the citizens of Ontario urgently demand elected representative solve this violation of the fundamental rights of our children to education, to medical privacy, and to remedy.