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PRESS RELEASE
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For Immediate Release

Ensuring the Right of All Island Children and Youth to an Education that Best Meets their Individual Needs and Abilities

CHARLOTTETOWN – The Child and Youth Advocate, Marv Bernstein, is providing this Press Release in support of the public release of the Office of the Child and Youth Advocate’s Advisory Statement: *Ensuring the Right of All Island Children and Youth to an Education that Best Meets their Individual Needs and Abilities*. The timing of this Release is important, particularly since Island students, families and educators are preparing to return to school in the coming weeks.

“The rights of every child to access an education, which considers and supports their individual needs and abilities, are enshrined in a number of provincial and federal pieces of legislation, and binding international conventions, and chiefly PEI’s *Education Act* and the United Nations Convention on the Rights of the Child (UNCRC). This Advisory Statement addresses the importance of upholding these embedded rights, while recognizing the complexities created by the need to balance the rights of all students”, states Bernstein.

“While we are encouraged by the Department of Education and Early Years’ commitment to evaluating and transforming PEI’s inclusive education model, and applaud the work of educators, administrators and staff who are doing their best to create safe and welcoming places for Island students, the Office of the Child and Youth Advocate remains concerned about the lack of immediate and short-term solutions identified and offered to students and families who are struggling in the present and cannot wait years for a more inclusive iteration of education”, states Bernstein.

“Our office is concerned about a number of daunting factors: the short- and long-term effects of irregular school attendance and prolonged school absenteeism on the success and well-being of Island children, youth and their families; the lack of clarity surrounding the legal authority of removing neurodivergent children from school for whole or partial days; the lack of transparent and family-friendly processes for voicing complaints and initiating appeals to school removal decisions; the lack of an independent student right to appeal; the lack of guidance and support resources provided to

students, parents and guardians experiencing educational service gaps; and the lack of transparent, student- and family-friendly information about alternative education programming”, says Bernstein.

The Office of the Child and Youth Advocate formally recommends to the Department of Education and Early Years and the Education Authorities that the following actions be taken by them within a 6-month period (by the end of February 2025):

1. Subject to privacy considerations, the development and public disclosure of improved data collection and analysis on school absenteeism, including numbers and frequency, particularly concerning students with complex educational support needs, noting if absences are for entire or partial days, and if absences are mandated by school administrators, or if they are at parental/guardian discretion;

2. The development, in consultation with the Office of the Child and Youth Advocate, and public disclosure of transparent and student- and family-friendly instructions for how students and parents/guardians may exercise their rights to file complaints, and/or commence appeals regarding school-based decisions to remove students from school for entire or partial days, including the introduction of an amendment to the PEI *Education Act* to establish the independent right of appeal for students;

3. The re-examination of student removal practices to ensure that practices are consistent with legal requirements, leading to the development of a public written document clarifying the existence or absence of legal authority to remove students from school specific to the circumstances of neurodivergent or disabled children who lack the ability to regulate their behaviour or understand the consequences of their actions;

4. The development, in consultation with the Office of the Child and Youth Advocate, and public disclosure of transparent, accessible and student- and family- friendly information regarding the identification and availability of alternative education program options; and

5. The development, and public disclosure, of clear guidelines for developing school re-entry plans for students who have been removed from school for entire or partial days, and who are not yet admitted to, or receiving alternative education programs outside the home, including the development of guidance documents for educators and parents/guardians to support structured home learning opportunities during periods of school removals.

The Office of the Child and Youth Advocate’s Advisory Statement: *Ensuring the Right of All Island Children and Youth to an Education that Best Meets their Individual Needs and Abilities* is available at: www.childandyouthadvocatepei.ca

Students and families seeking assistance in navigating the suite of remedies and supports available to them are welcomed to connect with the Office of the Child and Youth Advocate at voiceforchildren@ocyapei.ca or by telephone at 902-368-5630. Children and youth, and adults, do not

need any person's permission or referral to connect with the Office of the Child and Youth Advocate. The name of any person contacting the Office is confidential. Children and youth have a right to talk to the Child and Youth Advocate privately.

Backgrounder

The Office of the Child and Youth Advocate/PEI (OCYA) is encouraged by the commitment of the Department of Education and Early Years to review and transform Prince Edward Island's inclusive education model, evidenced by the releases of *Better Together: A Review of the Inclusive Education Model on PEI* (November 2023) and the *Inclusive Education Action Plan Consultation Draft* (June 2024), the latter of which is open for professional and public feedback until September 30, 2024. However, the Office remains concerned about the lack of immediate and short-term solutions for Island students, parents and guardians experiencing service gaps in the present, in which the statutory rights of Island children and youth are not being met under the current inclusive education model.

The OCYA has increasingly heard concerns from students, parents and guardians regarding the implementation of inclusive education in Island schools, specifically with respect to the rights of children and youth with complex needs to access education while being removed from school for entire or partial days due to the lack of appropriate supports. Some aspects of this issue have previously been highlighted by New Brunswick Child and Youth Advocate's May 2024 report, *A Policy of Giving Up: How New Brunswick schools illegally stopped educating hundreds of students and why the government must protect vulnerable children*, and a June 2024 CBC PEI report, *P.E.I. parents, advocacy groups say some children being denied right to an education*.

In addition to conversations with students and parents/guardians through Individual Advocacy Services and the input of the Child and Youth Advisory Committee of the PEI Office of the Child and Youth Advocate, the OCYA has met and/or consulted with Department of Education and Early Years (DEEY), the Public Schools Branch (PSB), La Commission Scholaire de Langue Française (CSLF), PEI Teachers Federation (PEITF) and the PEI Home and School Federation (PEIHSF) to understand the continuum of concerns and challenges in order to frame these within a child rights perspective and advance time-specific recommendations to guide immediate and short-term action by the Department of Education and Early Years, the Public Schools Branch and La Commission Scholaire de Langue Française.

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Ensuring the Right of all Island Children and Youth to an Education that Best Meets their Individual Needs and Abilities



Advisory Statement
from:



PRINCE EDWARD ISLAND

Child and Youth
ADVOCATE

www.childandyouthadvocatepei.ca



Ensuring the Right of All Island Children and Youth to an Education that Best Meets their Individual Needs and Abilities

Office of the Child and Youth Advocate Advisory Statement

August 2024

A) Purpose of OCYA Advisory Statement

The Office of the Child and Youth Advocate (OCYA) has a mandated responsibility, through the *Child and Youth Advocate Act*, to listen to and amplify the voices of children and promote and protect their rights. Increasingly, concerns have been expressed to our office about the status and implementation of inclusive education in Island schools and the impact on children with complex support and accommodation needs.¹ The concerns fall into three distinct categories:

- Students with complex support needs who are removed from school by administrators for partial days or an indeterminate number of full days without sufficient access to alternative education programs;
- Students with complex support needs who are removed from school by parents without sufficient access to alternative education programs; and
- Students with complex support needs who are in school but removed from the classroom into segregated areas

The dual purpose of this OCYA Advisory Statement is 1) to provide information and navigational support for students and their parents/guardians that will assist them in advocating for the student's right to an education that is meaningful and appropriate to their individual needs and abilities; and 2) to provide advice and recommendations to the Department of Education and Early Years and the Education Authorities in upholding the rights of all students to access education that best meets their individual needs and abilities. These are students and families who are currently experiencing challenges in accessing inclusive education, including students who have been removed from school or placed on partial days. This Advisory Statement is timely in light of recent public lines of inquiry regarding the rights of all students

¹ Students with complex support and accommodation needs may identify as neurodivergent, a term which applies to diagnoses of Autism Spectrum Disorder, Attention Deficit/Hyperactivity Disorder (ADD/ADHD), learning disorders (such as dyslexia, dyscalculia, and dysgraphia), Developmental Coordination Disorder, Tourette's Syndrome, and to acquired conditions such as traumatic brain injuries (Doyle, 2024; Izuno-Garcia et al., 2023). Students may also require support and accommodations due to physical disabilities, complex medical needs, mental health needs, and other factors.

to access education in complex support situations at the regional² and local³ levels. The intention is not to respond at this time to the Department of Education and Early Years draft Inclusive Education Action Plan or to the broader and multi-layered issue of the best means of establishing inclusive education for children and youth in PEI. This statement is also not a response to, nor reiteration of, the report issued by the New Brunswick Child and Youth Advocate (May 2024). We recognize that in certain exceptional circumstances, students may be removed from schools due to imminent concerns for safety or bona fide grounds for a suspension. Our specific focus in this Advisory Statement is the rights and needs of students who are neurodivergent or have complex support needs, who are not willfully engaging in challenging behaviours and may not fully understand its consequences, who are not able to attend school at the decision of school administrators or their own parents/guardians due to a lack of support to accommodate their unique needs, and who are not receiving support while not in school.

B) Need for Immediate Action by the Department of Education and Early Years and Education Authorities

There have been statements made in the Legislature that it will take three years to fully operationalize the final Inclusive Education Action Plan, without identifying what actions will be taken in the short-term. The OCYA recognizes the urgency of the difficult situations that many Island students and their families are in. These students and their families cannot wait three years and require immediate information and navigational support that is transparent and accessible. The concerns expressed to our office demonstrate a larger systemic problem in the province relating to substantial gaps in the continuum of supports for inclusive education in or out of the mainstream classroom, which requires, at a minimum, some well-considered immediate and short-term corrective action on the part of the Department of Education and Early Years and the Education Authorities to alleviate the negative impacts currently experienced by a growing number of Island families.

The OCYA is encouraged by the Department's commitment to reviewing inclusive education, and welcomes the extended invitation for students, families and professionals to provide feedback on the draft Inclusive Education Action Plan by September 30, 2024.⁴ The government's aim for transformative change in inclusive education is a long-term goal and we acknowledge the importance of taking time to get things right. However, there is an immediate need for short-term solutions for Island children and youth whose statutory rights to public education and related services are not being met under the current inclusive education model.

We have had conversations/communications with the Department of Education and Early Years, the Public Schools Branch (PSB), La Commission Scholaire de Langue Française (CSLF), PEI Teachers' Federation, and the PEI Home and School Federation. The OCYA extends its sincere gratitude to the Department of Education and Early Years for their cooperation in answering a series of questions during the preparation of this document. We hope to stimulate dialogue, recognizing the importance of finding timely solutions to ensure all children and youth can access their right to a quality education.

² New Brunswick Child & Youth Advocate (2024) *A Policy of Giving Up: How New Brunswick schools illegally stopped educating hundreds of students and why the government must protect vulnerable children.* <https://www.cyanb.ca/home>

³ Bruce, S. July 9, 2024. *P.E.I. parents, advocacy groups say some children being denied right to an education.* CBC News. <https://www.cbc.ca/news/canada/prince-edward-island/pei-school-children-complex-needs-challenges-1.7253083>

⁴ <https://www.princeedwardisland.ca/en/information/education-and-early-years/inclusive-education>

C) Role of OCYA as an Ally in Individual and Systemic Advocacy

The OCYA is committed to its role as an ally in, and partner to, effecting positive change for Island students and their families, and will continue to advocate for increasing transparency and reducing barriers. Students and parents seeking information and guidance in navigating potential supports can reach out to organizations such as the PEI Home and School Federation, the Autism Society of PEI, Resource Abilities, the Learning Disabilities Association of PEI, and the Office of the Child and Youth Advocate. The OCYA is pleased to offer Individual Advocacy as a valuable resource in assisting students and families to navigate the suite of supports and remedies available to them, and to ensure the rights of children and youth are promoted and protected. From a systemic advocacy perspective, it is also helpful for the OCYA to hear from students and parents/guardians as to the scope and breadth of these problems in order to overcome the obstacles and find some enduring solutions.

“While I am happy that there has been a review, I am disappointed with the lack of a clear plan with few changes and no sense of urgency, as this will take years to implement, years that current students do not have the luxury of.” (parent)

D) Laudable Efforts by School Administrators, Educators and Education Staff

At the outset, it is important to say that we recognize the challenges faced by school administrators and applaud the work of educators who work tirelessly every day to create learning environments that are safe and welcoming places for Island students and educators.⁵ We see examples of excellence, where educators use innovative approaches to meet the individual needs of their students. However, teachers and educational assistants require greater classroom and consultative support and specialized training to enable them to meet the increasing needs of a diverse student population. In this regard, the OCYA is pleased to see the announcement of additional teaching and support staff positions for the 2024-2025 school year, and specifically the increased investment in Behaviour Support teachers as part of the Positive Behaviour Intervention and Supports (PBIS) pilot program.⁶ Our office is keen to hear more about this pilot program and which 18 schools will be involved in the initial roll out; and we await student, parent, educator and Departmental reviews of this pilot as it progresses.

E) Rights of Students under Provincial, Constitutional and International Law

The rights of students with complex support and accommodation needs are derived from various legal authorities. These include two PEI statutes – the *Education Act*⁷ and the *Human Rights Act*⁸ – as well as from constitutional law in the form of the *Canadian Charter of Rights and Freedoms*⁹ and from

⁵ PSB Policies and Procedures, 605: *Safe and Caring Learning Environments*.

<https://psb.edu.pe.ca/index.php/safe-and-caring-learning-environments>

⁶ Prince Edward Island Government (August 28, 2024). *More supports available in Island schools*,

<https://www.princeedwardisland.ca/en/news/more-supports-available-in-island-schools>

⁷ Government of Prince Edward Island. (2024). *Education Act*. https://www.princeedwardisland.ca/sites/default/files/legislation/e-.02-education_act.pdf

⁸ Government of Prince Edward Island. (2024). *Human Rights Act*.

<https://www.princeedwardisland.ca/sites/default/files/legislation/H-12%20-Human%20Rights%20Act.pdf>

⁹ Government of Canada. (2024). *The Canadian Charter of Rights and Freedoms*.

<https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd/>

international law ratified by Canada, specifically the United Nations Convention on the Rights of the Child¹⁰ and the United Nations Convention on the Rights of Persons with Disabilities.¹¹

Prince Edward Island's *Education Act* codifies, at a provincial level, the right to access to education for every child and youth in the province (Section 42). The PEI *Education Act* also delineates the legal requirement for compulsory school attendance for Island children and youth aged 6-16 years (Section 46 (1, 2)). It also highlights the duty of parents/guardians to ensure that any school-aged child(ren) in their care attend school or an education program provided by an education authority (Section 46(3)). PSB policy recognizes its obligations to uphold and safeguard human rights in a way that promotes equity and access to rigorous educational opportunities for all students, while responding to their unique needs.¹² PSB policy also articulates the importance of school attendance as a foundation for student success and reiterates students' legal obligation to attend school and the duty of parents and guardians to ensure attendance.¹³

Prince Edward Island's *Human Rights Act* is also a provincial law that protects individuals receiving government services from prohibited grounds of discrimination, which include "disability", defined as a previous or existing condition, "whether of a physical, mental or intellectual nature..." (Sections 1(1) (c.1), (d), 10).

The *Canadian Charter of Rights and Freedoms* is part of Canada's constitutional law and guarantees to every individual "the right to the equal benefit of the law without discrimination ...based on mental or physical disability" (Section 15). This means that in the area of inclusive education, governments cannot pass laws or enact policies which either infringe on a student's right to be treated equally or fail to provide the supports needed for the student to have an equal opportunity to receive and benefit from educational services.

In terms of international human rights instruments, the United Nations Convention on the Rights of the Child (UNCRC) holds that the best interests of the child shall be a primary consideration in all decision-making (Article 3) and provides that children's voices be sought and meaningfully heard in decisions affecting them (Article 12). The UNCRC identifies every child's right to an education (Article 28) and places a legal obligation on the government of jurisdiction to direct education in the "development of the child's personality, talents and mental and physical abilities to the child's fullest potential" (Article 29). The rights set out in the UNCRC apply to all children, without discrimination (Article 2), and with specific acknowledgement of the rights of children with disabilities (Article 23).¹⁴ The Convention on the Rights of Persons with Disabilities (UNCRPD) provides further protections, ensuring that children with disabilities enjoy "all human rights and fundamental freedoms on an equal basis with other children" (Article 7). The UNCRPD provides that children with disabilities cannot be excluded from free and compulsory primary or

¹⁰ United Nations Human Rights Office of the High Commissioner. Convention on the Rights of the Child. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

¹¹ United Nations Human Rights Office of the High Commissioner. Convention on the Rights of Persons with Disabilities. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

¹² PSB Policies and Procedures, 403: *Race Relations, Cross Cultural Understanding and Human Rights in Learning*. <https://psb.edu.pe.ca/index.php/race-relations-cross-cultural-understanding-and-human-rights-in-learning>

¹³ PSB Policies and Procedures, 406: *Attendance and Engagement*. <https://psb.edu.pe.ca/index.php/attendance-and-engagement>

¹⁴ Committee on the Rights of the Child (2007) *General Comment No.9 The rights of children with disabilities*. <https://www.refworld.org/legal/general/crc/2007/en/48507>

secondary education, and that they receive appropriate accommodation and support to participate in education (Article 24).

Students have rights to an education, and the response by administrators and educators, in dealing with challenging student behaviours, cannot simply be to remove children from school for partial or full days for a specified or indeterminate length of time without providing transparent guidance to students, parents/guardians, and their families affected by these learning disruptions. This includes clear communication of student and parent/guardian rights in the form of identifying accessible pathways for filing complaints and appeals, as well as identifying and providing access to alternative education programs and resources. Where these obligations are not being discharged by the Department of Education and Early Years and the Education Authorities, children’s rights are being seriously compromised. The words of the New Brunswick Child and Youth Advocate resonate: “...we must never fall into the trap of making children disappear because they challenge the adults in the system. In fact, the children who test us the most often need us the most. It is exactly because these children’s needs are many and their vulnerabilities are high that we must have regular oversight and clear rules so that we can ensure that School Districts are not just making the tough cases disappear. If education is a right – and it is – we must always remember that rights often only truly matter exactly when they are inconvenient”.¹⁵

“I want to be at school full time. I can’t get my work done in 3 hours. I get behind.” (youth)

F) Benefits of Inclusive Education and Risks of School Absenteeism

Every child has a right to an education that is meaningful and appropriate to their needs and abilities. When children are not in school, they risk becoming invisible. Inclusive education, responsive to the individual needs of students, provides the foundation for a positive life trajectory and a healthy society.¹⁶ When children attend school regularly, teachers, support staff and other professionals are able to observe and identify academic and interpersonal concerns, including learning challenges, behavioural issues, health and medical conditions, and family contexts that may impact a child’s school performance.¹⁷ Conversely, school absenteeism is associated with a host of adverse outcomes, including poor academic performance, achievement gaps and falling behind peers, and increased school dropout rates as well as higher instances of engagement in potentially harmful activities such as substance abuse, violence, self-harm, suicide attempts, risky sexual behaviour, pregnancy, delinquency-related behaviours, injury and illness, having cascading effects for social, economic and health problems in later life.¹⁸ When not in school, children also miss the social and emotional learning opportunities afforded through interactions with

“When I’m not in school, all I do is play lego, cars and watch TV. I don’t know why I only go half days. I like coming here (school).” (youth)

¹⁵ New Brunswick Child & Youth Advocate (2024) *A Policy of Giving Up: How New Brunswick schools illegally stopped educating hundreds of students and why the government must protect vulnerable children.* <https://www.cyanb.ca/home, p.5>

¹⁶ UNESCO (2016) *Education 2030: Incheon Declaration and Framework for Action for the implementation of Sustainable Development Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.* <https://unesdoc.unesco.org/ark:/48223/pf0000245656>

¹⁷ Government of New Brunswick (2024). *Building a better education system: An action plan for implementing the long-term recommendations for New Brunswick’s anglophone education system.*

¹⁸ New Brunswick Child & Youth Advocate (2024) *A Policy of Giving Up: How New Brunswick schools illegally stopped educating hundreds of students and why the government must protect vulnerable children.* <https://www.cyanb.ca/home>

peers and school staff, with the potential for negative impacts on their mental health and well-being and ability to develop lifelong social and emotional competency skills.¹⁹

The impacts of school removal on students with complex support needs are concerning. When children are not in school, they are denied the education supports that would otherwise enable them to make progress and reach their full potential.²⁰ When children are removed from school, they fall further behind their peers, with long-term implications for healthy and successful development. Parents and guardians report to us that the only available support when children are removed from school is a maximum of 5 hours of medical tutoring per week, as available through the Public Schools Branch. Students able to access School Aged Autism Funding through Accessibility Supports may have the costs covered for a community aide or tutor

"We need greater supports in school. We need to address the refusal of supports to families because children are not able to cope with being in the school environment. There are no supports for families going through this." (parent)

"Schools are struggling. The inclusive system is not inclusive. Children are excluded. They don't learn in the same way as others. The only option is to stay home or do half days. The education system needs to make changes with more internal supports and different types of teaching should be available within the school so that the children can be part of the school and included, while being supported." (parent)

outside of school hours or during school vacation periods.²¹ The onus falls on the parent/guardian to identify and retain the tutor, which is often challenging. Many parents/guardians are not qualified educators, and do not have the capacity to take on the role of teacher within their homes. They worry that their children are falling behind and risk becoming isolated from their peers. They witness the declining mental health of their children and desperately want to find a solution.

G) Feedback from Students and Parents/Guardians

When we listen to parents and guardians of children with complex needs in education, we repeatedly hear that they are exhausted, frustrated and confused. They struggle to find information regarding the range of support available for students, and do not fully understand how to secure appropriate alternative education programs when their child's needs are not being met at school. Families express exhaustion in trying to navigate a complex system with siloed barriers across government departments, and the challenges of finding appropriate and effective help. Parents and guardians themselves report making the

¹⁹ New Brunswick Child & Youth Advocate (2024) *A Policy of Giving Up: How New Brunswick schools illegally stopped educating hundreds of students and why the government must protect vulnerable children.*

<https://www.cyanb.ca/home>

²⁰ In addition to academic and social learning, this may include access to school-based services such as autism services, speech-language pathology services, occupational and physical therapy services, school psychology services, services for blind and visually impaired and deaf or hard of hearing students, and English/French as additional language programming, as listed in the Consultation Draft of PEI's *Inclusive Education Action Plan*

https://princeedwardisland.ca/sites/default/files/publications/inclusive_education_action_plan_en.pdf

²¹ Prince Edward Island Government. Education and Early Years. Autism Funding.

<https://www.princeedwardisland.ca/en/information/education-and-early-years/autism-funding>

difficult decision to remove their children from school because school has become a place that feels unsafe, without effective accommodations or supports in place. Selected quotations from students, parents and guardians that reflect their conversations with the Office of the Child and Youth Advocate appear throughout this Advisory Statement.

“We were made to feel that our child was the only one, but we now realize there are more children struggling. We are all exhausted.” (parent)

H) Need for More Data

To tackle a problem, government departments must understand the nature and extent of a problem. How many children who are neurodivergent, or who have other support and accommodation needs, are absent from Island schools every day? How many of these absences are at parents’/ guardians’ discretion, and how many are mandated by school administrators? If the latter, at what level of authority are these decisions made? What education programs and services are available to children when they are absent from school? Reliable data, that is tracked and analyzed, is required to shed greater light on the pervasiveness of school removals and the resulting impact on students with complex educational needs. The Department of Education and Early Years has recognized the need for more robust data gathering and we welcome the introduction of data collection that will provide evidence to support the review and development of inclusive education.

I) Lack of Clarity by Education Authorities in Providing Grounds for Student Removals from School

Where a student is being removed from the school for half or full days by a school administrator without a student’s or parent’s/guardian’s consent, but without any clear objection, the school administrator may still infer consent. In those circumstances, students and/or parents/guardians may wish to consider making known their objection to the student’s removal from school, if such is their desired position. Students and parents/guardians may also wish to consider inquiring as to the explicit legal authority for that removal, and what recourse they have in response to such removal, including any complaint resolution mechanisms and appeal remedies. Additional inquiries can relate to the duration of the removal; the obligation of the education authority to develop a school re-entry plan for the student; and any action the education authority will be taking on the student’s behalf to facilitate access to an alternative education program. There may, of course, be opportunities to negotiate a mutually acceptable resolution without the need for the parent to raise any objection, and this would be ideal.

It appears from our discussions with parents and guardians of students with complex support and accommodation needs that the legal authority to remove children from school by administrators has not been clearly expressed to students and their families. This leaves families guessing as to what the authority is for the student’s removal from school, and what, if anything, they can do about it.

The Department of Education and Early Years has acknowledged in discussions with the OCYA that the removal of children who are not capable of regulating their own behaviour and/or understanding the consequences of their actions should not be subject to suspensions or expulsions as disciplinary action. The use of progressive discipline, including suspensions and expulsions, would therefore be inappropriate in the case of students who are neurodivergent. This approach is consistent with the considerations listed in PSB Policy 407 on Suspensions.²² However, in the case of neurodivergent students, the *Education Act*

²² PSB Policies and Procedures, 407: *Student Suspension*. https://psb.edu.pe.ca/sites/test-psb.edu.pe.ca/files/2022-05/407_Student_Suspension.pdf

does not appear to provide any additional legal authority for the partial or temporary removal of students from school. The Department of Education and Early Years has identified section 47 of the *Education Act* as providing the necessary legal authority to remove children from school. However, there is reason to question that interpretation, as that provision appears to refer to voluntary parental or student situations where students have been “excused from attending”, rather than situations in which school administrators inform a student and their family that regular attendance at school is not possible for a fixed or undetermined amount of time, or in which families must withdraw their child from school due to a lack of support.

Where a student with complex support and accommodation needs willfully engages in behaviour that threatens a safe learning and teaching environment in circumstances set out in PSB Policy 407 on Suspensions, that student may be suspended. Here, it would be important for a student or parent/guardian to ask who is making the decision to suspend and for what duration. The *Education Act* provides guidance on differential authority and time periods. For example, a teacher may suspend a student for a period of up to one half day (Section 51(1)(a)). A principal has heightened authority to suspend a student with or without conditions for a period of up to five consecutive days (Section 47(1)(b), (c)), while a Director of an Education Authority may suspend a student with or without conditions “for any period after April 30 that continues until the end of the school year” (Section 47(1) (d), (e), (2)).

A parent/guardian of a student attending school has the further right stipulated in the *Education Act* to be informed of “the student’s attendance, behaviour and progress in the school” (Section 57(1)).

J) Remedies Available to Students Parents/Guardians – Complaint and Appeal Processes

It appears from our discussions with parents and guardians that where their children are removed from school by administrators that neither they nor their children are, as a general rule, informed of their right to access a complaints resolution process, as set out in the PSB Concerns and Resolutions procedure.²³ According to this policy, “a person voicing a concern [which may include a student] may involve a support person/advocate” [such as the OCYA] and in the case of student service matters (which include matters such as special needs, student placement, resources and student behaviour) the sequential levels are “a) Teacher; b) Principal; c) Director of Student Services; d) Director of the Public Schools Branch; and e) Public Schools Branch Hearing Committee, concerning a student appeal in accordance with the *Education Act* and Student Appeal Policy.”²⁴

In our discussions with parents and guardians, it further appears that information as to their appeal remedies is not generally communicated. What is important for parents to know is that the PEI *Education Act* provides a right of appeal to a parent/guardian in three circumstances –from a decision to suspend a student (Section 55(3)(a)); from a decision to impose conditions upon a student, whether imposed as part of a suspension or not (Section 55(3)(b); and from any decision made by an education authority that “significantly affects the education, health or safety of a student” (Section 55(3)(c)). The latter appeal remedy would clearly apply in the case of the removal of a neurodiverse student from school over a parent’s or student’s objection, even where there is no suspension or expulsion. Where an appeal is initiated on any of these grounds, the appeal is conducted by the Education Authority’s Hearing Committee. At the appeal hearing, “the student and a parent of the student have the right to be heard”

²³ PSB Policies and Procedures, 102: *Concerns and Resolutions*. <https://psb.edu.pe.ca/index.php/concerns-and-resolutions>

²⁴ PSB Policies and Procedures, 102: *Concerns and Resolutions*. https://psb.edu.pe.ca/sites/test-psb.edu.pe.ca/files/2022-05/102.1_Concerns_and_Resolutions.pdf

(Section 53(4)). The Review Committee has the power to either confirm the decision of the education authority or “substitute its own decision in place of the decision appealed from” (Section 55(4)(b)) and must give written reasons for its decision within ten days of the hearing to the student and the parent of the student (Section 55(5)).

Under the PEI *Education Act Student Regulations*²⁵, the parent is required to file a Notice of Appeal in writing “within ten business days” of the aggrieved action (e.g. the removal of the student for partial or full days, as the case may be (Section 11(1)). Where an appeal is commenced by a parent/guardian, the same *Education Act Student Regulations* set out the content requirements of a Notice of Appeal (Section 11(2)).

The PSB also has a policy relating to the student appeals process that states that the “PSB Board of Directors expects that prior to initiating a student appeal process, parents/guardians and students will attempt to resolve issues at the school and branch level in accordance with the Concerns and Resolutions Operational Procedure”.²⁶ While this may be a meritorious route to follow in most cases, since legislation is deemed to prevail over policy, there is reason to conclude that the *Education Act* (Article 55) prevails over the PSB policy with respect to specific legislated appeal grounds. This means that a parent has an absolute right of appeal and should be able to move directly to their appeal hearing if they so choose.

It is worth noting that while these complaint resolution and appeal mechanisms exist and should be communicated to students and parents/guardians, they are not user-friendly processes and not sufficiently outlined in updated policies which refer to our office and the assistance we can provide to children and their families. In addition, our office has previously recommended that the *Education Act* be amended to provide students with independent appeal rights in decisions that only parents/ guardians can currently appeal.²⁷

K) Safety Considerations and Need for More Alternative Spaces for Students Unable to Attend Traditional Schools

Given every child’s right to an education, the UNCRC establishes the right of all children to be protected from violence and harm (Article 19). When the threat of physical violence is present, Section 34 of the *Criminal Code* may apply.²⁸ The OCYA is also aware of the provisions laid out in the *PSB’s Safe and Caring Learning Environments* policy and procedure, and the enormous task placed upon school administrators to ensure the safety of all staff and students. Every student has the right to feel and be safe at school. We are also empathetic to educators’ voiced concerns about increasing experiences of violence at school. We are mindful of the challenging balancing acts happening within our schools as part of the complexity of upholding the rights of all students. While recent investments in increasing supports at the Board, school and classroom levels have certainly helped some students succeed, we are, nevertheless, aware of situations where students and families have experienced significant service gaps. Inclusive education holds that it is ideal that as many students as possible be included in the traditional school and classroom. There are a number of social and sensory factors within these environments that present overwhelming

²⁵ Government of Prince Edward Island (2024). *Education Act Student Regulations*. https://www.princeedwardisland.ca/sites/default/files/legislation/e.02-8-student_regulations.pdf

²⁶ *Student Appeals*. <https://psb.edu.pe.ca/parent-and-student-resources/student-appeals>

²⁷ The Office of the Child and Youth Advocate/PEI Submission to the PEI Legislative Assembly Standing Committee on Education and Economic Growth (October 18, 2022): *Children’s Rights and Education in Prince Edward Island*, Recommendation #3.

²⁸ Government of Canada. *Criminal Code*. <https://laws-lois.justice.gc.ca/eng/acts/c-46/FullText.html>

challenges for many students,²⁹ and we recognize that there may be exceptional cases in which the traditional school and classroom are not ideal or feasible learning environments for some students. In these exceptional cases, we underscore the need for information about, and access to, alternative education options. In this regard, Section 9 of the PEI *Education Act* states that the “Minister may establish and provide classes for those persons unable to attend school ...or may provide for the education of those persons in (other) programs.”

Information about the existing alternative education programs is difficult for families to find and navigate. In conversations with the Department of Education and Early Years, and with their continuing assistance, the OCYA has identified the following Alternative Education options by grade level in the Public Schools Branch. There may be individual cases where the student’s needs require flexibility on age or grade level categories:

- Grades K-6
 - Primary Enhanced Learning Program (PELP), West Royalty Elementary (K-2 and 3-6)
 - A+ Program, Montague Consolidated
 - A+ Program, Elm Street Elementary
 - A+ Program, O’Leary Elementary
- Grades 7-9
 - Intermediate/Senior Alternative Education Program, Royalty Center (Charlottetown), Grades 7-9
 - Intermediate/Senior Alternative Education Program, Three Oaks Senior High, Grades 7-9
- Grades 7-12
 - Intermediate/Senior Alternative Education Program, Souris Regional
 - Intermediate/Senior Alternative Education Program, Montague High
 - Intermediate/Senior Alternative Education Program, Westisle Composite
 - Enhanced Learning Program (ELP), Birchwood Intermediate
- Grades 10-12
 - Intermediate/Senior Alternative Education Program, Royalty Center (Charlottetown), Grades 10-12
 - Intermediate/Senior Alternative Education Program, Three Oaks Senior High, Grades 10-12
 - Virtual Online education option

It is important to note that referrals for these programs are made by the administration of the school at which the student is registered. At present, students and parents cannot self-refer to alternative education programs. In conversations with DEEY and PEITF, the OCYA has learned that alternative education spaces are limited. As well, referrals are typically short-term, and are geared toward correcting challenging behaviours or issues to facilitate a return to mainstream schooling, or to bridge and ease transitions between school levels (elementary to intermediate, intermediate to high school). The OCYA could not find information regarding the availability of alternative education programs within the CSLF. Students with

“We want him to thrive, not break his spirit. These kids have incredible gifts, but the system tries to force them to be like other kids. We need different options. We need neurodiverse friendly schools with more autism awareness. Why can’t all kids have opportunities? One pathway won’t work for all kids.”

²⁹ Cunningham, M. (2022). ‘This school is 100% not autistic friendly?’ Listening to the voices of primary-aged autistic children to understand what an autistic friendly primary school should be like. *International Journal of Inclusive Education* 26:12, 1211-1225. Doi: 10.1080/13603116.2020.1789767

complex educational, support and accommodation needs, and their families would benefit from transparent, accessible, student and family-friendly information regarding the identification and availability of, and processes to access, these alternative education programs, including program capacities and the anticipated wait times to access these programs and services. Our understanding is that, at present, alternative education programming on PEI is not conceptualized as a long-term or permanent option for students who cannot sustain success in traditional classrooms or school environments. Our office concurs with the PEITF's reflection that "...it is imperative that alternate settings and proper supports for students are provided in order to achieve a safe learning environment and increase the chance of success for every student."³⁰

L) Potential for PEI to be a Leader in Inclusive Education

Education can be a powerful tool to reduce social inequalities and raise expectations for all children. We know that high quality, inclusive education has the potential to change lives and lay the foundation for a successful life. For this to happen, children require access to education supports that recognize and value their unique learning needs. The OCYA reiterates its support of the Department of Education and Early Years' commitment to reviewing inclusive education, and the laudable aspiration to be a leader in inclusive education. PEI, as a small jurisdiction, is uniquely positioned to find solutions to challenges that could seem intractable in other settings. The OCYA is committed to effecting positive change for Island children, youth and their families. Students and parents/guardians seeking information and guidance in navigating the potential supports available to them are invited to connect with Individual Advocacy services by contacting the OCYA at voiceforchildren@ocyapei.ca or by telephone at (902)-368-5630.

M) Action-Oriented and Time-Specific Recommendations

As part of this Advisory Statement, and pursuant to Section 12(2)(h) of *the Child and Youth Advocate Act*³¹, the Office of the Child and Youth Advocate formally recommends to the Department of Education and Early Years and the Education Authorities that the following actions be taken by them within a 6- month period (by the end of February, 2025):

1. Subject to privacy considerations, the development and public disclosure of improved data collection and analysis on school absenteeism, including numbers and frequency, particularly concerning students with complex educational support needs, noting if absences are for entire or partial days, and if absences are mandated by school administrators, or if they are at parental/guardian discretion;
2. The development, in consultation with the Office of the Child and Youth Advocate, and public disclosure of transparent and student-and family-friendly instructions for how students and parents/guardians may exercise their rights to file complaints, and/or commence appeals regarding school-based decisions to remove students from school for entire or partial days, including the introduction of an amendment to the *PEI Education Act* to establish the independent right of appeal for students;
3. The re-examination of student removal practices to ensure that such practices are consistent with legal requirements, leading to the development of a public written document clarifying the existence or absence of legal authority to remove students from school specific to the circumstances of neurodivergent

³⁰ Written Statement provided by the General Secretary, PEITF

³¹ Prince Edward Island *Child and Youth Advocate Act*,

https://www.princeedwardisland.ca/sites/default/files/legislation/c-04-3-child_and_youth_advocate_act.pdf

or disabled children who lack the ability to regulate their behaviour or understand the consequences of their actions;

4. The development, in consultation with the Office of the Child and Youth Advocate, and public disclosure of transparent, accessible and student- and family- friendly information regarding the identification and availability of alternative education program options; and

5. The development, and public disclosure, of clear guidelines for developing school re-entry plans for students who have been removed from school for entire or partial days, and who are not yet admitted to, or receiving alternative education outside the home, including the development of guidance documents for educators and parents/guardians to support structured home learning opportunities during periods of school removals.

Respectfully released this 30th day of August 2024, on behalf of the PEI Office of the Child and Youth Advocate by:



Marvin M. Bernstein, B.A., J.D., LL.M. (ADR)

Child and Youth Advocate

Office of the Child and Youth Advocate/PEI