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PRESS RELEASE

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For Immediate Release

Office of the Child and Youth Advocate Releases Report Monitoring the Implementation of Recommendations

As the school year draws to a close, the Office of the Child and Youth Advocate is releasing its report *Waiting for Student-Centred Action: Towards a Continuum of Rights-Respecting Options for Students with Complex Educational Support Needs*, publicly examining the implementation status of five recommendations issued by this Office to the Department of Education and Early Years (DEEY), the Public Schools Branch (PSB) and la Commission scolaire de langue française in its August 2024 Advisory Statement, *Ensuring the Right of all Island Children and Youth to an Education that Best Meets their Individual Needs and Abilities*.

“Progress toward implementing the Advisory Statement recommendations has been exceedingly slow, without the necessary sense of urgency, and has not involved any meaningful consultation with the Office of the Child and Youth Advocate, even where explicitly required within two of the five recommendations. None of the recommendations have reached the level of either Full Implementation or Substantial Implementation. Three recommendations have been ranked as No Implementation and two recommendations have been ranked as Partial Implementation. Within our monitoring evaluation framework, we consider a ranking of Full Implementation or Substantial Implementation to be positive outcomes and a ranking of Partial Implementation or No Implementation to be negative outcomes,” said Child and Youth Advocate, Marv Bernstein. “Our Office continues to engage with children, youth and their families who are excluded from school, either by necessity or by choice, since their needs continue to be unmet in the current system.”

The intent of the Child and Youth Advocate’s recommendations is to support a continuum of options for students with complex support and behavioural needs, who continue to face barriers to accessing education within the current model. “While the optimal approach in inclusive education is to integrate students with complex educational needs or neurodiversity into a general classroom structure, we recognize that this will not work for all students. In those circumstances, their right to education should be upheld in alternate ways. Having children who are excluded from school remain home without any educational programming is a nullification of their right to an education and is not an option,” Bernstein stated.

“The Office of the Child and Youth Advocate champions the notion of providing a continuum of options for students with complex educational support and behavioural needs, which requires a reconsideration of appropriate and sustainable alternative schooling options, and the provision of other learning



resources and opportunities for students who need to be at home. However, school removals by education authorities must first be seen as a last resort, be supported by law, and be both child-centred and rights-respecting,” said Bernstein. In this regard, teachers can only do so much. Front-line educators require additional resources to enable students with complex educational support and behavioural needs to thrive in mainstream classrooms, including exploring such strategies as: specialized training for educators; additional staffing and resources, including consistent access to counselling services, behavioural and mental health supports, occupational therapists and speech language pathologists; individualized in-classroom curricula; temporary time-outs for students with sensory overload to prevent dysregulation; and other such mechanisms as recommended by experts. “Where administrators intend to remove such students from school for partial or entire days, parents and students have the right to a clear explanation as to the legal authority for such removal, as well as an immediate description in plain language, supported by transparent and accessible materials, of their rights to a fair and objective complaints process and a direct appeal process without any added preconditions,” continued Bernstein.

In the course of assessing the degree of implementation of the Office of the Child and Youth Advocate’s Advisory Statement recommendations, the Office obtained an external legal opinion that addressed a series of legal issues. On the basis of that legal opinion, the Office of the Child and Youth Advocate holds the following three positions. Firstly, there is no explicit residual legal authority under the *Education Act* to exclude a student otherwise than in accordance with express, narrow exclusionary provisions in ss. 51 (a teacher, principal or Director may suspend a student), 54 (a Director may expel a student) or 81 (a principal may exclude a student from the school until the student has been examined by a medical practitioner or nurse practitioner). Secondly, the PSB has no legislative authority to enact a policy or procedure for its own convenience that denies the statutory right to appeal provided to parents under s. 55(1) of the *Education Act* in circumstances “where a decision of an employee of an education authority significantly affects the education, health or safety of a student.” Thirdly, while no student is guaranteed a school day of the same length as the school day provided to the rest of the student’s class, nevertheless a decision to provide only partial days to certain students must be justified with reference to the legal constraints set out in the *Education Act*. “This legal opinion calls into question the legality of the actions of the DEEY and the PSB in administratively removing students for partial or full days that don’t fall within the narrowly defined explicit authority conferred in the *Education Act*, having regard to the fact that the DEEY has previously conceded that punitive sanctions, such as suspensions and expulsions, would not be appropriate in the case of students who could not regulate their own behaviour, as in the case of neurodiverse students. The legal opinion further calls into question the legality of the PSB enacting policies and procedures that unfairly impede a parent’s clear and direct statutory right to appeal under the *Education Act*,” said Bernstein.

“The rights of every child to access an education, without discrimination based on disability, and 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 –namely, the PEI *Education Act*, the PEI *Human Rights Act*, the federal *Canadian Charter of Rights and Freedoms*, the international United



Nations Convention on the Rights of the Child and the international United Nations Convention on the Rights of Persons with Disabilities. These various rights afforded to children are infringed upon by the policies and practices that sanction the removal of students for full or partial days without clear legal authority and the limited number of alternative education options being made fully available to those students with complex educational support needs who do not succeed in mainstream classrooms”, stated Bernstein.

“There have been many statements of good intention. It is time for urgency in actions to ensure the right of all Island children and youth to an education that best meets their individual needs and abilities,” One year ago, in June 2024, the DEEY presented the draft Inclusive Education Action Plan to the Standing Committee on Education and Economic Growth and described it as being a 3-year plan before full implementation. That Plan has not yet been finalized and another full school year has now passed. I remain concerned for students who are excluded from school for partial or entire days who remain waiting for alternative pathways to access the education they are entitled to”, commented Bernstein.

“The Office of the Child and Youth Advocate acknowledges with respect and gratitude the many dedicated educators who provide inclusive and safe spaces for children and youth of all abilities to learn and thrive. They are often going the extra mile within an education system that is not sufficiently student-centred or rights-respecting. It is the hope of the Office of the Child and Youth Advocate that this Implementation Status report will inspire renewed energy and promote urgency in actions to ensure the right of all Island children and youth to an education that best meets their individual needs and abilities,” added Bernstein.

Backgrounder

The Office of the Child and Youth Advocate has a mandated responsibility, through the *Child and Youth Advocate Act*, to listen to and amplify the voices of children and youth, and to promote and protect their rights. Pursuant to the *Child and Youth Advocate Act*, the Advocate may advise or make recommendations to any public body or community organization responsible for providing reviewable services to children and youth on any matter relating to the rights, interests and well-being of children and youth (s. 12(2)(h)). The Advocate is mandated to monitor the implementation of and compliance with recommendations in reports issued by the Office of the Child and Youth Advocate (*Child and Youth Advocate Act*, s. 12(1)(d)).

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