



Waiting for Student-Centred Action: Towards a Continuum of Rights- Respecting Options for Students with Complex Educational Support Needs

Report of the Office of the Child and Youth Advocate

June 26, 2025



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Introduction

In August 2024, the PEI Office of the Child and Youth Advocate released its Advisory Statement, *Ensuring the Right of all Island Children and Youth to an Education that Best Meets their Individual Needs and Abilities*. This Advisory Statement was released in response to the increasing number of referrals to our Office from students, parents and guardians regarding the slow implementation of inclusive education reforms 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 school and classroom supports.

The progress of the Department of Education and Early Years and the Education Authorities to implement the recommendations from the Office of the Child and Youth Advocate's August 2024 Advisory Statement 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 five recommendations. None of the recommendations have reached the level of either full implementation or substantial implementation in our assessment. For those students who are unable to succeed in the mainstream classroom, for whom the status quo of supports has failed, and who have not met the criteria for alternative education programming, there remains a dearth of options available to uphold their right to an education in other ways. It is not apparent that substantive change has been felt by children and youth who are excluded from school for partial or entire days, either at the direction of school administrators or at the discretion of their parents or guardians who do not view their children's needs as being adequately met at school.

The Office of the Child and Youth Advocate is mindful that the issue of school absenteeism is long-standing, multifaceted and complex. Likewise, nested within the broader systemic concern of school absenteeism, the issue of school removals for entire and partial days is nuanced. Through a child-rights lens, all students have the right to access meaningful education, and to be protected from all forms of harm. From an administrative standpoint, Education Authorities must also ensure the safety of other students, as well as their own staff. As such, the Office of the Child and Youth Advocate recognizes that a 'one size fits all' approach to addressing school removals is inappropriate and ineffective; as one parent phrased in the Advisory Statement, "one pathway won't work for all kids." The Advocate acknowledges that, for some children and youth, a traditional school setting will never meet their needs. The Office of the Child and Youth Advocate has thus intended the Advisory Statement recommendations to address a continuum of appropriate remedies, applicable across a range of circumstances, that should be transparent and accessible to both students and their parents/guardians. The Advocate's



recommendations emphasize that the scope of the practice of school removals must be tracked and understood; there must be accessible and transparent avenues and remedies for students and their families to file complaints and initiate appeals; the basis for all decisions and actions must stem from statutory authority; meaningful and sustainable alternatives must be presented for children, youth and their families who face barriers to accessing education; and the statutory right of children and youth to access education must be upheld, even if achieved by alternative means.

The Office of the Child and Youth Advocate acknowledges with respect and gratitude the many dedicated educators to provide inclusive and safe spaces for children and youth of all abilities to learn and thrive. The complexity of the issue of school removals for partial or entire days is not lost: in taking a child-rights perspective, the Office of the Child and Youth Advocate recognizes the rights of all children to safely access a meaningful education in a school environment. Likewise, the Advocate is mindful of the reality that schools are workplaces, and that the adults in schools have a right to be safe. The position of the Child and Youth Advocate is thus not to define inclusion as placing every student in the same classroom, although the optimal approach in inclusive education is to integrate students with complex educational needs or neurodiversity into a general classroom structure. This could be aided by meaningful changes in the classroom, specialized training for educators, additional staffing and resources, individualized in-classroom curricula for students with complex support needs and temporary time-outs when there is sensory overload on the part of such students. However, this paradigm will not work for all students. In those circumstances, the right of students with complex educational support needs to access a meaningful education should be upheld in alternate ways. This might involve investments in supports that address the causes of dysregulation, including commitments to Occupational Therapy, Speech Language Pathology, counselling services, and behavioural and mental health supports.

Background

The PEI Office of the Child and Youth Advocate is an independent statutory office of the PEI Legislative Assembly. Our Office raises awareness of and upholds the rights of children and youth that are set out in the United Nations Convention on the Rights of the Child. Our vision is “a province where every child and youth experiences the realization of their human rights and has every opportunity to reach their full potential”. 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)).

A Child-Rights Lens

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 and best interests. The educational rights of students with complex support and accommodation needs are derived from various legal authorities. These include two PEI statutes, the *Education Act* and the *Human Rights Act*; as well as from constitutional law in the form of the *Canadian Charter of Rights and Freedoms*; and from international law ratified by Canada, specifically the United Nations Convention on the Rights of the Child, and the United Nations Convention on the Rights of Persons with Disabilities.

The PEI *Education Act* codifies the right to access education for every child and youth in the province (Section 42) and sets out the legal requirement for compulsory school attendance for Island children aged 6-16 years (Section 46 (1) and (2)). The Public Schools Branch's *Attendance and Engagement Policy* also articulates the importance of school attendance and reiterates students' legal obligation to attend school, and the duty of parents and guardians to ensure attendance. Prince Edward Island's *Human Rights Act* 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 and, in particular without discrimination based on ... age or 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 required 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 considered 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). 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 secondary education, and that they receive appropriate accommodation and support to participate in education (Article 24).

Advisory Statement Recommendations

Five recommendations were directed to the Department of Education and Early Years (DEEY) and the two Education Authorities, the Public Schools Branch (PSB) and la Commission scolaire de langue française (CSLF) in the Advisory Statement. These recommendations were issued pursuant to section 12(2)(h) of the *Child and Youth Advocate Act*, which holds that "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.”

- 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 to 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 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 parent/guardians to support structured home learning opportunities during periods of school removals.

Office of the Child and Youth Advocate Recommendation Monitoring Process

Pursuant to the *Child and Youth Advocate Act*, “the Advocate is responsible for monitoring implementation of and compliance with recommendations included in reports made under this *Act*” (s. 12(1)(d)). The goal of making and monitoring recommendations is to improve the effectiveness and responsiveness of reviewable services provided to children and youth (s. 12(2)(g)). Returning to its recommendations fulfills the Office of the Child and Youth Advocate’s statutory obligation under s. 12(1)(d) of the *Child and Youth Advocate Act* and serves to keep systemic issues affecting children and youth at the forefront after a report is released. This ensures that the Office of the Child and Youth Advocate contributes to creating a culture of meaningful and sustained change among reviewable service providers to improve outcomes for Island children and youth.



The Office of the Child and Youth Advocate crafts recommendations that are targeted, measurable and aimed at improving the effectiveness and responsiveness of reviewable services. As a matter of administrative fairness, preliminary recommendations are shared with their recipients prior to their public release, and the Advocate may consider their feedback in finalizing the recommendations. When issuing recommendations, the Advocate will specify a timeframe for response. The Office of the Child and Youth Advocate will convene a discussion with representatives from the government department or public body that has received recommendations to discuss their provided response(s) and to allow for clarification and elaboration on the implementation actions described.

The Office of the Child and Youth Advocate considers the actions and steps taken by government departments and public bodies providing services to children and youth in order to assess the implementation status of each recommendation. The implementation status of each recommendation is assigned to one of four categories: Full Implementation; Substantial Implementation; Partial Implementation; or No Implementation. Scores of Full Implementation and Substantial Implementation are considered positive outcomes, while scores of Partial Implementation and No Implementation are considered negative outcomes.

Of the five recommendations issued in the Advisory Statement, none are fully implemented; none are substantially implemented; two are partially implemented; and three recommendations have seen minimal or no action toward implementation.

	Implementation Status Ranking	Definition	Advisory Statement Recommendation Status
+	Full Implementation	All actions that directly support the implementation of the recommendation are complete. No further actions are currently required.	0
	Substantial Implementation	Most of the actions that directly support the implementation of the recommendation are complete. There are minor actions required to	0

		meet full implementation.	
-	Partial Implementation	Some of the actions that directly support the implementation of the recommendation are complete. There are significant actions required to meet full implementation.	2
	No Implementation	No aspects of the recommendation have been fulfilled. All actions to meet full implementation are outstanding.	3

Evaluating Implementation Status

Within the Advisory Statement, the Office of the Child and Youth Advocate requested a response to the recommendations from the DEEY and Education Authorities within 6 months of their receipt (by February 28, 2025), indicating the action steps taken by the responsible authorities to implement each recommendation. With due consideration to the Ministerial and administrative changes within the Department, the Advocate granted the DEEY's request of a 1-month extension to the response deadline. The initial response to the Advisory Statement recommendations was received by the Office of the Child and Youth Advocate from the DEEY on March 31, 2025. The Office of the Child and Youth Advocate met with representatives from DEEY and the CSLF on May 8, 2025 to discuss the initial response provided by the Department. It is noteworthy that no representative from the PSB was available to attend this meeting. The Office of the Child and Youth Advocate requested that any additional responses or supporting documentation with respect to the implementation of the recommendations be received by May 22, 2025; this deadline was later extended to May 23, 2025.

External Legal Opinion Obtained



Upon receiving the supplementary response from the DEEY, the Office of the Child and Youth Advocate obtained an external legal opinion to assist in its evaluation of the initial and supplementary responses to determine the implementation status of the recommendations.

The salient conclusions provided by external legal counsel were:

1. The *Education Act* does not provide explicit authority to exclude a student otherwise than in accordance with express 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, “if it appears necessary in the interest of the other students, immediately exclude a student from the school until the student has been examined by a medical practitioner or nurse practitioner”), having regard to the authority asserted by the Department of Education and Early Years in ss. 47 and 1(2) of the *Education Act*.
2. The Public Schools Branch does not hold legislative authority to enact a policy or procedure that denies or restricts the statutory right to appeal provided to parents under s. 55(1) of the *Education Act* (“Where a decision of an employee of an education authority significantly affects the education, health or safety of a student, a parent of the student may appeal the decision to the hearing committee of the education authority in accordance with the regulations.”)
3. While the *Education Act* does not guarantee same-length school days to all students, this does not mean that the Education Authorities have the freedom to restrict a student’s school day without regard to legal constraints, such as the student’s right to receive an education and have the benefit of reasonable accommodations without discrimination.

Implementation Status of Recommendations

Recommendation #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.

In its initial response to this recommendation, DEEY noted that new attendance categories were added to PowerSchool in 2024 to track absenteeism by the percentage of school days missed by a student, to classify absenteeism as Satisfactory, At-Risk, Chronic, or Severe Chronic. While these categories may provide useful global attendance data for school administrators, they do not provide meaningful insights pertaining to this recommendation.

Beginning in September 2024, two additional attendance codes were created in order to better track absenteeism and partial day attendance:



- Code RD (Reduced Day) – identifying students who are attending school for partial days, in most cases under a solution mutually agreed upon between parents and the school; and
- Code AP (Student Services – Absent for Planning) – identifying students who are absent during a period of time in which the school is developing a transition plan (which may include, for example, procuring equipment for transfers or bathroom adaptations) for the student, made at the school's discretion in consultation with specialists and parents

The initial response to the Advisory Statement, received in March 2025, also outlined the ability of the Education Authorities to report on these absentee codes, subject to privacy considerations, in their annual public reports.

The Office of the Child and Youth Advocate was pleased that the follow-up discussion with education officials confirmed that school removals are considered a last-resort option, and that parents are involved throughout intervention planning with school-based student services teams. However, the Office of the Child and Youth Advocate remains concerned with the assertion that partial days and school removals are solutions that are mutually agreed upon by schools and families. Students and their families may “agree” by default when an alternative option is not presented by school administrators, and/or when they are not informed of their right to complaint and appeal remedies.

The Office of the Child and Youth Advocate is encouraged by the creation of new attendance codes that capture partial day attendance and periods of exclusion from school while accommodation planning is underway. However, data on partial day attendance and absences during transition periods for the 2024-2025 school year is not available publicly, and the scope of the use of partial days or school removals during periods to plan for additional supports remains unclear. The Office of the Child and Youth Advocate is also concerned that these attendance codes fall short of capturing a fulsome picture of partial days and school removals. In many Individual Advocacy cases navigated by the Office of the Child and Youth Advocate, parents/guardians have elected to remove their child from school, as the supports available in schools are insufficient to ensure their child's safety and learning. In other cases, the students may refuse to attend, as they are not feeling adequately supported. The DEEY and Education Authorities indicated that such absences would be coded as Family Approved. The Office of the Child and Youth Advocate notes that such coding would obscure the nuances of *why* students and families are choosing not to attend school.

Implementation Ranking: **Partial Implementation**

Recommendation #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 to appeal for students.

Pursuant to s.55 of the *Education Act*, “where a decision of an employee of an education authority significantly affects the education, health or safety of a student, the parent of the student may appeal the decision to the hearing committee of the education authority in accordance with the regulations.” Beginning with a similar recommendation issued to the then-Department of Education and Lifelong Learning in 2022, the Office of the Child and Youth Advocate has consistently championed that students be granted the right to appeal decisions that significantly affect their education, health or safety on their own behalf, independent of parent/guardian involvement. In its initial response to this recommendation in the Advisory Statement, the DEEY indicated that the PSB and CSLF have well-defined appeals processes in place that are working effectively and appropriately. Additionally, the March 2025 response noted that the requirement for parent/guardian under the existing appeals process has great merit and is consistent with other jurisdictions in Atlantic Canada. However, the Office of the Child and Youth Advocate, through its own jurisdictional scan, found independent appeal rights to be afforded to students in education matters in Nova Scotia, as well as in British Columbia, the Yukon and the Northwest Territories.

Within PSB, the *Report It!* tool was identified as an avenue for students to express their perspectives and concerns outside of the formal appeals process. While advertised and broadly understood as a reporting tool for discrete and defined incidents, as per the PSB’s website, the supplementary response received from the DEEY suggested that broader complaints could be logged through *Report It!* by selecting the “other” option in cases where a student concern lay outside of the provided list on the online form. In the May 8, 2025 discussion, the Office of the Child and Youth Advocate suggested that a re-branding of *Report It!* could be beneficial to communicating its wider applicability to students. The Advocate also notes that there is no tool equivalent to *Report It!* within the CSLF.

Within its supplementary response of May 23, 2025, the DEEY provided the Office of the Child and Youth Advocate with draft flow charts illustrating the PSB’s processes for Concerns and Resolutions and Student Appeals, indicating the intention for these flowcharts to appear on the Education Authorities’ websites for the 2025-2026 academic year. However, it is noted that the Office of the Child and Youth Advocate was not involved in consultation for the development of these flowcharts, as was stipulated in the Advisory Statement recommendation. Additionally, the flowcharts produced provide an illustration of the processes currently in place, and do not encapsulate any meaningful changes to the student appeals process as recommended by the Advocate. Significantly, these flowcharts maintain the illegal procedural requirements set out in the Request for Appeal Form (which should be a Notice of Appeal Form as stipulated in the Regulations) and do not address the key intent of the Advocate’s recommendation: to provide students with the right to appeal decisions that affect their education, health or safety on their own behalf, independent of a parent or guardian.



Under s. 55 of the *Education Act*, the parent of a student may appeal to the Hearing Committee when a decision of an employee of an Education Authority significantly affects the education, health or safety of a student. Notwithstanding this statutory right to appeal, the PSB has taken the position that a “request” for an appeal “may be denied” if the parent or guardian initiating the appeal on behalf of a student has not attempted to resolve their concern in accordance with the *Concerns and Resolution Procedure*. The *Concerns and Resolution Procedure*, the *Student Appeal Board Governance Policy*, and the Request for Student Appeal form all direct the concerned person to first address issues with the teacher and/or school administrator, working through the levels of the PSB (e.g. Student Services, Assistant Director, and Director), prior to filing a formal student appeal with the Hearing Committee.

Aligned with the external legal opinion and the principles of administrative law, the Office of the Child and Youth Advocate holds that decision-makers cannot out of convenience create policies that add a precondition to the exercise of a statutory right. The *Student Regulations* of the *Education Act* (s. 11(1)) and the *Student Appeal Board Governance Policy* require that a parent/guardian must file an appeal within 10 days of having knowledge of the decision. To require (or recommend) that parents first engage in a protracted dispute resolution process may cause this appeal period to expire prior to the conclusion of attempts to resolve the issue through the dispute resolution process. Pursuant to s. 55(3) of the *Education Act*, where the decision under appeal pertains to a suspension, conditions imposed on a student, or the decision of an employee of an education authority that significantly affects the education, health or safety of a student, the hearing committee shall hear the appeal (emphasis added). However, student appeals information from the PSB website holds that “the 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*” and directs would-be appellants to the *Student Appeal Board Governance Policy* and Request for Student Appeal form. The Student Appeal Board Governance Policy highlights the expectation that attempts will be made to resolve issues at the school and branch level in accordance with the *Concerns and Resolutions Operational Procedure*. The Student Appeal Request Form notes that that board requires the appellant to follow the *Concerns and Resolutions Operational Procedure* to resolve the issue at the school or branch level; and that the failure to do so may result in a denied request for an appeal. The Office of the Child and Youth Advocate highlights that the creation of policy pathways directing would-be appellants through process steps, and policy language of requests to appeal (that the Education Authority may deny) rather than notification of appeal, is contrary to the statutory right to appeal enshrined in the *Education Act*.

With respect to providing students with the right to initiate an appeal independent of their parent or guardian, the Advocate advanced a similar recommendation to the then-Department of Education and Lifelong Learning in October 2022, calling for an amendment to the *Education Act* to provide students who are children or youth with access to an independent and child- and youth-friendly appeals process. This recommendation was endorsed by the Standing Committee on Education and Economic Growth in



November 2022. The Advocate notes that a Fall 2024 amendment to the *Education Act*, which allows students to appeal a decision denying them independent student status, is a change that both highlights flaws in the current appeals process and addresses only a very limited number of circumstances for youths who have withdrawn from parental control. Furthermore, this amendment was made without meaningful consultation with the Office of the Child and Youth Advocate and without due consideration of the Advocate's outstanding recommendations regarding student appeals. The Office of the Child and Youth Advocate suggests that legislation and experiences in relation to established independent appeal rights afforded to students both inside and outside of Atlantic Canada be considered in a fulsome way in order to position Prince Edward Island's education system as child-centred and progressive.

The Office of the Child and Youth Advocate holds that the absence of timely and transparent complaint resolution and appeal rights compromises the safety of students in the school system. The Office of the Child and Youth Advocate continues to ask what timely remedies are available and clearly accessible to parents, guardians and students when they conclude that the learning environment is unsafe at school. In the responses provided by the DEEY and the Educational Authorities, student appeals are conflated with parent/guardian appeals; processes by which students may be able submit youth-friendly systemic complaints are inadequately addressed within incident-reporting tools; the potential applicability of *Report It!* to systemic concerns is not widely communicated to children and youth, and this avenue is limited to the students in the PSB; students cannot initiate their own appeals; and the statutory right to appeal to the Hearing Committee continues to be negated by policies that require prior dispute resolution steps and processes, and that grant the PSB the ability to deny appeals, contrary to the *Education Act*.

Implementation Ranking: **No Implementation**

Recommendation #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 or disabled children who lack the ability to regulate their behaviour or understand the consequences of their actions.*

Subsection 42(1) of the *Education Act* gives every qualifying person the right to access, as a student, an education program in a school operated by an Education Authority. Further pursuant to the *Education Act*, there are three scenarios in which a student may be excluded from accessing an education program in a school: during a suspension (s. 51), an expulsion (s. 54) and due to the need to be medically examined related to regulated diseases (s. 81).

Upon the August 2024 release of the Advisory Statement, the DEEY confirmed to the Office of the Child and Youth Advocate that the removal of neurodivergent or disabled students, who lack the ability to

control or understand their behaviours or the consequences thereof, from school for partial or entire days does not qualify as a suspension under s. 51 of the *Education Act*. The reasoning provided was that a suspension is a disciplinary measure in reaction to a willful act. The Office of the Child and Youth Advocate fully concurs with this interpretation in the context of neurodivergent or dysregulated students who are unable to control or understand the consequences of their behaviours.

At the time of the Advisory Statement's release, the DEEY pointed to s. 47 of the *Education Act*, "A student is excused from attending school on an instructional day if...the student is unable to attend because of illness or for another reason which has been reported to and approved by the principal of the school," as the legal authority to remove students from school for entire or partial days. In line with the external legal opinion obtained, the Office of the Child and Youth Advocate rejects this explanation. The verb "excused" connotes the relief from an obligation, rather than the limitation of a right; therefore, within the text and context of this provision, there is no plausible reading of this provision as creating authority to exclude a student seeking to exercise their right to access an education program in a school.

In its responses to this recommendation, the DEEY stated that its intent is to ensure a healthy and safe work environment for all; and pointed to a legal authority to restrict school attendance pursuant to s. 1(2) of the *Education Act*, which holds that, "all rights and benefits conveyed by the Act are subject to limitations which are reasonable in the circumstance." Again, in accordance with the external legal opinion obtained, the Office of the Child and Youth Advocate takes issue with this explanation. First, where school exclusion is allowed under s. 51, s. 54 and s. 81 of the *Education Act*, the legislation confers exclusionary power on specific persons (for example, a principal), language that is missing from s. 1(2). Second, within the context of the *Education Act* as a whole, the suggestion that s. 1(2) confers a general authority to exclude students whenever it is "reasonable", would render redundant the express exclusionary provisions in ss. 51, 54 and 81. Third, the *Education Act* empowers any staff person to exclude from a school any person who creates or attempts to create a disturbance (s. 30(1)); yet also expressly exempts from this provision any student, during school hours, who is not suspended or expelled (s. 30(2)). The Office of the Child and Youth Advocate concurs with the external legal opinion that it is illogical to suggest that the Legislature intended for s. 1(2) to create an authority to exclude students alongside enacting s. 30(2) to expressly protect students, who are not otherwise suspended or expelled, from being excluded from school during school hours.

Additionally, in its supplementary response of May 2025, the DEEY noted that while s. 42 of the *Education Act* establishes the right of children and youth to access an education program in a school, the Act does not guarantee the right to a full day of school. While the *Education Act* does not guarantee same-length school days to all students, the Office of the Child and Youth Advocate holds, in accordance with the external legal opinion obtained, that this does not mean that the Education Authorities have the freedom to restrict a student's school day without regard to the student's rights to receive an education and reasonable accommodations without discrimination. The Office of the Child and Youth

Advocate also highlights the mandatory attendance provisions under s. 46 of the *Education Act* and considers the student obligation to attend alongside the Department's reference to the PSB's *Attendance and Engagement Policy* and *Operational Procedure* in its supplementary response to the Advisory Statement's recommendations. Specifically, *the Attendance and Engagement Operational Policy* emphasizes "the legal obligation for parents and the school board with respect to student attendance" (para. 1.1.5) and elaborates in para. 1.2 that "attendance in school is central to educational achievement and school success. School attendance is required by law, under the *Education Act*, for all children between the ages of six (6) and sixteen (16). **Parent(s)/guardian(s) must ensure that students attend and remain in school daily**" (emphasis added). Further, the PSB's *Safe and Caring Learning Environments Policy* stipulates at para. 4.3 that responses to student behaviours will take into account a student's ability to be accountable for and control their behaviour, and their ability to understand the consequences of their actions.

In the absence of explicit authority to exclude students from school for reasons other than ss. 51, 54, and 81 of the *Education Act*; alongside the express protection from removal of non-suspended/expelled students provided in s. 30(2) of the *Education Act*, and the policy directive that parents must ensure that that students attend and remain in school daily, the Office of the Child and Youth Advocate maintains that there is no clear explicit legal authority in the *Education Act* for the DEEY nor the Education Authorities to remove or exclude neurodivergent students from attending school for partial or entire days (emphasis added). The Office of the Child and Youth Advocate holds that this is particularly true in the context that those most likely to be excluded are those who are most vulnerable, and most in need of structured support. It should be noted, however, that a teacher or administrator would still have the authority to remove a student from a classroom pursuant to various defence provisions in the *Criminal Code* in circumstances where a student was engaging in violent or assaultive behaviour.

Implementation Ranking: **No Implementation**

Recommendation #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.*

In its initial response to this recommendation and in follow-up discussions, the DEEY maintained that alternative education is a limited capacity, school referral-based program that is designed to be a short-term intervention to remediate behaviours, with the goal to return the student to the mainstream school and classroom. Alternative education is conceptualized as a temporary intervention, not a long-term solution to challenges with the mainstream environment, and not a different way or place to learn. The Office of the Child and Youth Advocate's follow-up meeting with education officials clarified that alternative education lies solely within the domain of the PSB; it is not an initiative of the DEEY, and



there is no equivalent within the CSLF, where students may have individualized educational programming but do not have options for alternative education sites.

The March 2025 response from the DEEY, and discussions at the May 2025 follow-up discussion, noted that educational professionals, including a Manager of Student Services, a Counselling Consultant, alternative education program staff, and staff from the referring school, determine student placements in alternative education programs on a case-by-case basis, after other interventions have been unsuccessful. While there is a contact list for alternative education sites on the PSB website, additional information is not made available to the public, as students and families cannot sign-up for, or self-refer to, alternative education.

In the May 2025 follow-up meeting with the Office of the Child and Youth Advocate, the DEEY clarified that the Department maintains a list of approved virtual learning programs for students in Grades 10-12. The Department cited the impossibility of offering the Kindergarten to Grade 9 curricula virtually. It was explained to the Office of the Child and Youth Advocate that the decision to offer a virtual high school option is made at the school level, with approval required by the Director of English Education at the Departmental level. High school students may qualify for virtual education options to for a variety of needs, including but not limited to accommodating competitive sport schedules to medical circumstances.

The Office of the Child and Youth Advocate is significantly concerned with the statement in the DEEY's initial response that "the alternative education program is not a suitable setting for all students who experience barriers in the regular school setting," and the supplementary response that within PEI's inclusive education system, support to meet children's needs are put into place at local schools. The Office of the Child and Youth Advocate continues to receive regular referrals from children, youth and their families regarding the inadequate response to their unmet needs within the current educational model. Without alternative options, there is no apparent solution offered for many experiencing barriers in the mainstream system other than partial day attendance, removal from school entirely, or homeschooling.

Pursuant to s. 9 of the *Education Act*, the Minister has authority to establish and provide classes for persons unable to attend schools, an authority the Advocate argues is underused in the limited alternatives to mainstream classrooms available. While the DEEY offered that the Inclusive Education Action Plan proposes a tiered-supports approach that has the potential to resolve many of the issues raised in the Advocate's Advisory Statement, the Office of the Child and Youth Advocate reiterates that the Inclusive Education Action Plan and accompanying Ministerial Directive on Inclusive Education are still unfinalized, immediate action steps towards Inclusive Education are opaque, and full implementation of the "transformative" Inclusive Education model remains aspirational. While there has

been communication regarding the Positive Behaviour Intervention Supports (PBIS) pilot, it is important to note that the PBIS is a tiered system model, which does not address those students with acute and complex support needs in the highest tier. The Office of the Child and Youth Advocate remains concerned by the lack of accessible and transparent communication to students and their parents/guardians regarding the options available for alternative education programs, including the potential to access virtual high school options. When only school officials have this information, the ability of students and their parents/guardians to ask appropriate questions and self-advocate for options is restricted. The persistent protection of this information within the PSB and within schools means that the substance and intent of this recommendation remains unrealized.

Implementation Ranking: **No Implementation**

***Recommendation #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 parent/guardians to support structured home learning opportunities during periods of school removals.*

In its Advisory Statement, the Office of the Child and Youth Advocate elevated the voices of children, youth and their families who have been removed from school for partial or entire days, many of whom expressed frustration, boredom and a desire to return to school, as demonstrated in the quote included in the August 2024 Advisory Statement (below). The Advisory Statement also captured the stress and exhaustion of parents and guardians, including those who have had to leave or reduce their outside employment in order to care for their children who are unable to attend school, and those who are worried about their children's widening learning gaps as they are not equipped to serve as educators as well as parents.

"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)

In the May 2025 follow-up conversation with the Office of the Child and Youth Advocate, education officials noted that schools may provide home learning materials to students in situations such as medical absences; but that requests for home learning materials during elective absences, such as family trips, will be denied. It is not clear how elective absences based on parent/guardian determination that their child is not receiving adequate support, or student school refusals over unmet needs, are considered when determining eligibility for home learning materials. Education officials also noted that "any principal" can guide parents with respect to learning while the child is not in school. While this



provides some reassurance, this response places the onus on parents and guardians to ask for guidance regarding home learning options, opportunities, and resources, and also requires that the parent/guardian knows what questions to ask. This is a challenge for parents and guardians who are already overwhelmed; who are not trained educators; who are balancing multiple priorities such as parenting more than one child, parenting a child with complex needs, working outside the home, or parenting as lone parents; or who may not communicate easily in English or French.

In the supplementary information package received by the Office of the Child and Youth Advocate in May 2025, the DEEY provided additional information about Medical Tutoring and Special Tutoring. Funding support for medical tutoring may be provided for students who are unable to attend school due to medical conditions; and funding for special tutoring is available to students whose circumstances are such that they are temporarily out of school and who may require tutoring to bridge the gap until they are able to return to school. In both cases, parents/guardians are responsible for recruiting tutors, and may have to supplement the funds allotted in order to provide an attractive and sustainable wage for tutors.

The DEEY also noted that it supports exceptional requests for alternative programming, such as online learning in high school years, that are forwarded by student services teams from the Education Authorities.

In the May 2025 follow-up meeting with the Office of the Child and Youth Advocate, the DEEY also noted that it maintains home learning resources that families can access – if they elect to homeschool and register as homeschooling. While it is helpful to know that home learning resources exist, the Office of the Child and Youth Advocate maintains that restricting such resources to registered homeschooling families overlooks the reality that homeschooling is not a viable option for many families; and many of the children and youth who are excluded from school seeking Individual Advocacy support from the Office of the Child and Youth Advocate remain registered in public schools. The Office of the Child and Youth Advocate holds that all decisions to restrict school attendance for partial or entire days should be accompanied by clear plans and resources to support structured learning until regular, full-time attendance at school is restored; and that these plans should be provided by the school without the need for parent/guardian requests for programming.

Implementation Ranking: **Partial Implementation**

Concluding Remarks from the Advocate

The Office of the Child and Youth Advocate released its Advisory Statement, *Ensuring the Right of all Island Children and Youth to an Education that Best Meets their Individual Needs and Abilities* as an urgent call to action to the DEEY and the Education Authorities to address the rights and needs of



neurodivergent or disabled students with complex support needs who have been excluded from attending school for partial or entire days. The release of the Advisory Statement was intentionally timed prior to the start of the 2024-2025 school year, in response to the increasing volume of individual advocacy referrals to the Office of the Child and Youth Advocate involving children and youth excluded from attending school, and families facing extreme pressures of frustration, stress and exhaustion. Upon issuing the Advisory Statement, the Child and Youth Advocate noted concern about the lack of immediate and short-term solutions identified and offered to students and families who are struggling in the present, and who cannot wait years for a more inclusive iteration of education.

As the school year draws to a close, there has been little action on behalf of the DEEY and the Education Authorities to implement the five Advisory Statement recommendations. While the Advocate regrets to report the exceedingly slow implementation of the Advisory Statement recommendations, this evaluation would not surprise the students and families whose lived realities with school removals have not changed since the release of the Advisory Statement. Through Individual and Systemic Advocacy work, the Office of the Child and Youth Advocate continues to hear from children, youth and their families, particularly those who have higher support needs and who identify as neurodivergent, who are unable to attend school. They may be removed from school either because school administrators have placed them on partial day programming; or because parents, guardians or the children themselves have made the decision to stop attending schools that cannot meet their support needs.

The Office of the Child and Youth Advocate continues to push for better data collection on the scope of partial and full-day school removals; and urges the DEEY and the Education Authorities to take concerted action to provide transparent, accessible, immediate and, where needed, long-term alternatives for learning to students who continue to face barriers in the mainstream classroom with the status quo of interventions offered. The Office of the Child and Youth Advocate also reiterates its calls for students and their families to have access to clear and transparent complaint and appeals processes, without conditions or preconditions placed through policy on the statutory right to appeal decisions that affect a student's education, health or safety.

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. School removals must be considered a last resort, be supported by law, and be both child-centred and rights-respecting: having children who are excluded from school remain home without any educational programming is not an option. To this end, the Office of the Child and Youth Advocate observes that Section 9 of the *Education Act*, outlining the Minister's authority to establish and provide classes for those persons unable to attend schools, is currently underused, but holds a great deal of potential in reimagining inclusive options to meet a continuum of needs and abilities. The Office of the Child and Youth Advocate urges the DEEY to examine



the suite of alternative schooling options used effectively in other Canadian jurisdictions, that may be in-person, virtual or hybrid in delivery, as one step to promote inclusion and to alleviate the stresses on Island families who are excluded from meaningful educational options outside of the mainstream system.

"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)

There have been many statements of good intention. Promises have been made for transformation in Prince Edward Island's Inclusive Education model. One year ago, in June 2024, the DEEY presented its Draft Inclusive Education Action Plan to the Standing Committee on Education and Economic Growth, noting that implementation would be well underway in 3 years after finalization of the Inclusive Education Action Plan. Nevertheless, the Inclusive Education Action Plan has yet to be finalized. Concerningly, Prince Edward Island has been without a Ministerial Directive to provide a framework outlining the roles and responsibilities of the Department of Education, Education Authorities, and schools with respect to programs and services for students with special educational needs since 2016. Island children, youth and their families, especially those with complex educational support needs who are continuing to face barriers in accessing education, do not have the luxury of waiting any longer. 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.

Respectfully released this 26th day of June 2025, on behalf of the PEI Office of the Child and Youth Advocate by:

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