



Office of the Child and Youth Advocate/PEI

Submission to the PEI Legislative Assembly  
Standing Committee on Education and Economic Growth

*Children's Rights and Education in Prince Edward Island*

October 18, 2022

## Introduction

I would like to begin my remarks by thanking the Committee, for once again, inviting me to speak with you today, noting I last spoke with this Standing Committee in July 2021. Today, as last time, I am pleased to be joined by Rona Smith, our Office's Executive Director, who has been with our Office from the very beginning.

I wish to preface my remarks with a series of acknowledgements on behalf of our Office.

We first wish to acknowledge we are meeting today on the traditional territory of the Mi'kmaq people. We acknowledge the continuing harm of colonialism, and our team at the Office of the Child and Youth Advocate is committed to moving forward collaboratively with all Indigenous children, youth and their families, in the spirit of truth and reconciliation.

We next wish to acknowledge, with appreciation, the courageous children and youth who continue to allow us the privilege to bear witness to their lived experiences, noting public expectations that our education system provide safe learning environments for all students.

We encourage children, youth and their families to continue to reach out to our Office for advocacy support to assist children and youth to have their voices heard, and acted upon, in individual cases, as well as, for the broader systemic purpose of promoting and protecting the rights of all children and youth in Prince Edward Island.

We also wish to acknowledge the substantial challenges experienced by teachers, administrators and all staff employed by the Department of Education and Lifelong Learning and the Education Authorities throughout the continued COVID experience and more recently the aftermath of Hurricane Fiona. Throughout these unprecedented events, many individuals, at all levels of our education system, have gone - and continue to go - above and beyond the call of duty in their support of the educational rights and well-being of children and youth in our province.

I also wish to acknowledge the many conversations and good faith cooperation our Office has received from both the Department of Education and Lifelong Learning and the Education Authorities.

I also wish to commend this Committee for wanting to find enduring solutions to serious issues facing children and youth within the education system of this province. My comments today will focus on what we, in our Office, have both heard and learned over

the past year about how children and youth are doing in our Island schools, as viewed from a child rights lens within our mandate under the PEI *Child and Youth Advocate Act*.

Our staff have had the opportunity to review the transcript of the Standing Committee's May 24, 2022 meeting and I am pleased to speak to matters raised in the Committee's workplan discussion specific to our Office, namely:

- school dress codes;
- an update on sexual misconduct (and we have included gender discrimination in schools); and
- challenges for children and youth accessing mental health support in schools (which we view as being exacerbated by the bullying and demeaning behaviours of others, as well as their own school absenteeism, which prevent them from accessing school-based supports).

In addition, we would also like to include an update on:

- school absenteeism; and
- student complaint (reporting) and appeal procedures

As the Child and Youth Advocate for PEI, I have a unique and privileged responsibility to amplify the voices of children and youth. As I did when I last appeared before this Committee, I will be opening my commentary today with quoted statements from PEI children and youth who have shared their concerns directly with our Office over the course of this past year. Some of these concerns have been expressed in my presence, but most have been expressed directly to Advocacy Representatives employed by our Office.

As part of a larger context, it is important to remember that by the time children, youth and their families reach out to our Office and seek individual advocacy, they often feel that reviewable service providers have not been listening sufficiently to their concerns. It is through this individual advocacy lens (rather than through surveys, focus groups or a systemic review) that I am relating the direct voices and words of children and youth, which reflect their lived experience.

These statements have been made to staff of our Office on the basis that the identities of individuals will not be disclosed directly or indirectly.

## **A) General Unfiltered Voices of Children and Youth in the Context of the PEI Education System**

I will now begin:

*“A change of Principal changes the entire school culture. This makes a huge difference.”*  
– from a Youth

*“The District Advisory Committees are to advise the Minister. Students should be on these, but they only meet three times a year. We need people to go to schools, reach out to students, go where they are, and offer help there. One school council President does not know all the issues. They are not a Youth Worker.”* – from a Youth

*“I only have one Teacher I could trust to talk to. If they are not available... I don't know what I would do.”* – from a Youth

*“Actually, trying to convince an adult to listen to you is an effort unto itself.”* – from a Youth

## **B) Significance of Children’s Rights and the United Nations Convention on the Rights of the Child**

In preparing for my presentation today, our Office has completed an analysis of what we have heard and what we continue to learn in order to inform my Recommendations to you today. Embedded within this is an overarching and consistent theme - ***children are human rights holders and their rights must be embedded in legislation and in age-appropriate rights-respecting curricula affecting them. This includes the PEI Education Act and school curricula at all grade levels.***

The United Nations Convention on the Rights of the Child is the most recognized human rights treaty in the world, having been ratified by 196 countries to protect and promote the human rights of all children and youth under the age of 18 years. Canada ratified the United Nations Convention on the Rights of the Child over 30 years ago in December 1991.

In theory, every five years, but usually longer, Canada, as a signatory nation, must report on behalf of the federal, provincial and territorial governments, to the United Nations Committee on the Rights of the Child, located in Geneva, and demonstrate how Canada is ensuring compliance with all the provisions of the United Nations Convention on the Rights of the Child.

As a point of interest for this Committee, on June 9, 2022, the United Nations Committee on the Rights of the Child issued *Concluding Observations on the Combined Fifth and Sixth Reports of Canada*. I would encourage all MLA’s to read this document with a view to exploring what we can all be doing more actively in PEI to fulfill the Recommendations of the monitoring Committee.

Specific to the education rights of every child and youth in Prince Edward Island, Article 28 of the United Nations Convention on the Rights of the Child recognizes the child's right to a quality education grounded on the principle of "equal opportunity."

In its most recent Concluding Observations to Canada, dated June 23, 2022, the United Nations Committee on the Rights of the Child recommends that Canada "strengthen efforts to promote the development of a culture of human rights in the education system". I will incorporate the specific elements of a workplan set out by the Committee in my recommendations at the conclusion of these remarks.

A notable concern for our Office here is that the PEI *Education Act* does not contain a comprehensive child rights section for students. Once these rights are established in legislation, they can also be reflected in any student complaint (reporting) operational and procedure documents which replace elements of the current *Safe and Caring Learning Environments* Operational Policy and Procedure documents. This absence of a comprehensive child rights section for students is to be juxtaposed with section 49 of the *Education Act*, which sets out a detailed list of responsibilities for students:

***"49. Student responsibilities***

*A student enrolled in a school has the following responsibilities:*

- (a) to attend school regularly and punctually;*
- (b) to be ready to learn and actively engage in and diligently pursue the student's education;*
- (c) to ensure that a student's conduct contributes to a welcoming, caring, respectful and safe learning environment;*
- (d) to respect the rights of others in the school;*
- (e) to refrain from, report and not tolerate bullying or bullying behaviour directed to others in the school, whether or not it occurs on the school premises, during the instructional day or by electronic means;*
- (f) to comply with the rules of the school and the policies of the education authority;*
- (g) to co-operate with everyone authorized by the education authority to provide education programs and other services;*
- (h) to be accountable to the student's teachers and other school staff for the student's conduct;*
- (i) to contribute positively to the student's school community."*

## C) Issues Impacting the Rights of Children and Youth in PEI Schools

I will begin this portion of my presentation with the overarching statement that there appear to be serious systemic and societal challenges negatively impacting the rights and well-being of children and youth throughout our education system in Prince Edward Island, notwithstanding the good faith efforts of many dedicated educators. Of course, this state of affairs isn't unique to PEI, and it is going to take everyone working together to achieve positive outcomes, and it will take time. This must include the meaningful participation of children and youth every step of the way.

For each area I have indicated I will speak to today, once again, I will preface my comments first with direct quotes from PEI children and youth, as shared with either me directly or with a staff member of our Office.

## D) School Dress Codes

In correspondence addressed to each of the three political party leaders, dated June 25, 2021, members of the Child and Youth Advisory Committee to our Office stated:

*“Dress Codes in Schools – These should be removed or altered to what is only absolutely necessary. They are not needed. They are sexist, racist, and harmful. Dress codes create horrible implementation practices in schools. Female students are repeatedly targeted by administrators and having the message re-enforced that they are sexual objects and male students are uncontrollable. This is systemic sexism.”*

Children and youth have the right pursuant to Article 12(1) of the Convention to have their views heard and “*given due weight according to their age and maturity*” in all decisions affecting them.

Article 29(1)(d) of the United Nations Convention on the Rights of the Child makes it clear that education must be directed to:

*“The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of Indigenous origin”*

Notwithstanding the arguments in favour of school dress codes, they can also present significant challenges. School dress codes can be sexist and discriminatory in their differential interpretation and stricter enforcement for females, as compared to males. In addition, students who are gender-non-conforming, gender-fluid, or transgendered have

a right to freedom of expression and gender identity that can easily be violated by a school dress code.

Forcing students to wear something that might be uncomfortable or inconsistent with their gender, cultural or religious identity can also have devastating impacts on their mental health. There is also the socio-economic differentiation that can be accentuated by school dress codes, as students from less affluent families may have fewer and less conforming clothes to wear to school, as well as the concern about body shaming for those students with different body types.

Another concern is that school dress codes are too often overly restrictive and susceptible to broad interpretations, leading to the potential for arbitrary enforcement by school administrators.

Any established school dress code system, if there is to be one, should therefore provide consistency across the province with clear and defined student complaint (reporting) and appeal mechanisms, to include contact information for the Office of the Child and Youth Advocate. There should also be requirements for data collection and roll-up reporting of all school dress code penalties and suspensions to the Office of the Child and Youth Advocate for monitoring purposes.

The proposed draft school dress code guidelines provided to our Office are set out in a document called "*Guidelines for School Attire and Dress Code Development.*" These Guidelines admirably state that "*Student dress codes and administrative enforcement should not reinforce stereotypes or marginalize any group based on race, gender, ethnicity, religion, sexual orientation, household income, gender identity, body size or cultural observance.*"

These Guidelines also state that they "*are not intended to impose or mandate a dress code in all schools*". This approval of variable implementation of Dress Code Guidelines in schools across the province leaves implementation discretion to school administrators, based upon a subjective assessment of individual school needs and local community standards – which can then lead to unequal and inconsistent treatment of students across the province.

I have provided the following preliminary feedback to these draft Guidelines:

- It would be important for children and youth to see a final draft of the Guidelines and provide meaningful input before the Guidelines are finalized and implemented;

- It would be important to seriously consider the potential negative impacts of having a variety of dress codes in individual schools (even with standardized Guidelines);
- It would be important to consider how these Guidelines will be administered and enforced and how these Guidelines are linked into the student complaint (reporting) policy;
- It would be important to consider the role of our Office when a student is identified as having violated a school dress code or the Guidelines generally; and
- It would be important to apply a Child Rights Impact Analysis to the draft Guidelines.

It is important then for the Education Authorities to pull back from moving ahead with the current 14-page Draft Dress Code Guidelines and allow students to participate meaningfully from the outset, in consultation with our Office, and assist the Education Authorities in their determination of whether school Dress Codes are necessary at all, or should be implemented on a consistent basis at all schools in Prince Edward Island.

#### **E) Sexual Misconduct and Gender Discrimination**

Here again, I will start with the direct voices of children and youth.

*“I’ve brought up talking about rape in a class, and the teacher completely ignored the topic. Whether she was uncomfortable I don’t know. But sliding it away seemed a bit odd to us. I feel rape gets shoved under the blankets in school.”* – from a Youth

*“I feel like we should talk about how little talk about rape there is. I feel it affects so many people, almost like drug addictions”* – from a Youth

*“At my school, guys touch girls in the hallways and joke about it”* – from a Youth

*“Teachers make excuses like ‘boys will be boys’ and don’t do anything”*- from a Youth  
*“Students will send nudes all the time”* – from a Youth

*“Recognition that gendered ‘roles’ are no longer appropriate – such as Prom King and Prom Queen or Male Athlete of the Year and Female Athlete of the Year”* – from a Youth

*“School should have Gender-Neutral bathrooms that are accessible, not tucked away somewhere that you need to ask to access”* – from a Youth

*“We need gender-neutral changing rooms”* – from a Youth



*“She [school professional] has continually disrespected my pronouns and has never apologized for this. It is borderline harassment” – from a Youth*

*“French is a gendered language. It does not allow for they/them pronouns. We need a solution to this” - from a Youth*

*“Attendance lists should be accurate when provided to substitute teachers. If our name or pronouns have changed from the list, they need to know.” – from a Youth*

*“There needs to be a month or more of content to learn about Genders – Not just a day, week or health class” – from a Youth*

*“If a student is ‘out’, respect their privacy or ASK if you actually NEED to know and it is relevant” – from a Youth*

---

As I have previously stated, children and youth in PEI have the right to access an appropriate standard of education in a safe learning environment and be protected in educational settings from all forms of discrimination and violence. These are rights guaranteed in the United Nations Convention on the Rights of the Child. Their concerns must be taken seriously, and corrective action taken. We must begin by creating safe space for children and youth to be heard.

Article 2(1) of the Convention on the Rights of the Child places an obligation on governments to ensure that all Convention rights can be enjoyed by all children within their jurisdiction *“without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”*

Likewise, article 19(1) of the Convention on the Rights of the Child places an obligation on governments to *“take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s) legal guardian(s) or any other person who has the care of the child.”*

Last fall, there were two student protests over allegations of gender discrimination and harassment in Island schools. Children and youth have clearly spoken. They want, and must be invited, to participate in a meaningful way as we move forward to carry out the many changes required. To date, we have not seen evidence to suggest that these concerns have abated over the past year.

Our Office has additionally provided supports for children and youth from the 2Spirit LGBTQ+ community who do not feel safe or heard in their schools. While children, youth and families acknowledge the progress made in schools (for example, with the introduction of new Gender Identity Guidelines), some students continue to experience gender discrimination, harassment and bullying within their schools.

When children and youth report sexual harassment and assault to our Office, they speak of the lasting and negative impact this has on their self-esteem, their inability to focus and concentrate at school, their relationships with peers and families, and a general decline in their overall education outcomes. These are serious incidents requiring responses that avoid victim blaming.

School administrators, educators and other professionals must collaborate to provide holistic and timely support for children and youth who are victimized. Preventative and rights-respecting measures must be embedded in school policies and procedures to strengthen the safety of all children and youth.

In order to evaluate progress, we require year-over-year comparative data relating to the reported incidence of bullying, harassment, homophobia, transphobia, racism and physical and sexual assault. I have requested such data but have been advised that it is not yet readily available.

To quote a Youth:

*“We need to see change and be involved in the process”* - from a Youth

## **F) Mental Health Supports in Schools**

Once again, I will start with the direct voices of youth:

*“All students need a check-in – not just those [engaged with] the School Well Being Team”* – from a Youth

*“We all need mental health break days”* – from a Youth

The need for mental health supports for children and youth has received increased public attention since the onset of the pandemic. The literature indicates that this has had a profound impact upon the mental health of children and youth in the form of increased anxiety, fear, depression, isolation, problems with school, disrupted sleep and suicidal ideation. This has also caused children and youth to spend more time online and on social media, increasing the risk of their exposure to cyberbullying and other forms of exploitation.

A recent comprehensive report entitled *“One Chance to be a Child”*

[https://www.onechancens.ca/files/ugd/db246d\\_3f701820ee1f40a09e7d7fd484c53736](https://www.onechancens.ca/files/ugd/db246d_3f701820ee1f40a09e7d7fd484c53736).

[pdf?index=true](#) looks at how children and youth are doing in our neighboring province, Nova Scotia. This report was conducted by a multidisciplinary team of service providers, academics and community leaders from across Nova Scotia, as led by the Dalhousie University's Department of Pediatrics and the Healthy Populations Institute. The report provides an assessment of child and youth well-being in Nova Scotia, through a child rights lens, as organized into six key questions guided by UNICEF's Canadian Index of Child and Youth Well-Being. The questions are:

- Are we secure?
- Are we learning?
- Are we healthy?
- Are we happy?
- Are we connected to the environment?
- Do we belong and are we protected?

Specific to the question on education, the report states:

*“While children and youth in Nova Scotia are learning in schools, positive experiences and strong educational achievement are not universal. Too many young people feel that school is not a safe or enjoyable place to be. Too often, these feelings are experienced by young people who face barriers and structural inequities related to race or ethnocultural group, sexual orientation, gender identity, or disability.”* (p. 9, Summary Report)

Specific to the mental health of Nova Scotian children and youth, the report states:

*“Influences on mental health and well-being are interconnected and far reaching from adverse childhood experiences like abuse and poverty to physical health problems, quality of relationships, and experiences of racism and bullying.”* (p. 14 Summary Report)

*“Legislation, policy and programming should be evidence-informed, data-driven, and reflective of need. Improving all aspects of child and youth well-being will require increased availability and access to quality data across sectors; these data can provide guidance for action and can help measure progress and outcomes.”* (p. 21 Summary Report)

*“While actions aimed at single issues are necessary and may seem simpler to implement, systemic change that upholds fundamental child rights will lead to sustainable improvement in the overall well-being of all children and youth in Nova Scotia.”* (p. 21 Summary Report)

## **G) School Absenteeism**

Over the past year, our Office has been seeing an increasing trend of calls specific to children and youth not attending school. Interchangeable language is often used to describe the issue of school absenteeism to include truancy, missing school, school absenteeism, chronic school absenteeism or educational neglect.

Once again, I will preface my comments with a direct quote from a youth:

*“I know I’ve missed a lot of school. I don’t want to get mom in trouble. It’s all my fault.”* – from a Youth

Section 46(3) of the *Education Act* places an obligation on every parent of a child from 6 to 16 years of age to “*ensure to the best of his or her ability, that the [child] attends a school or an education program provided by an education authority.*” This is subject to limited statutory exceptions.

Section 48 of the *Education Act* then imposes a further obligation on school principals in the case of frequent absence from school:

### **“48. Frequent absence from school**

(1) *Where it appears to the principal of any school that a student is frequently absent from school without satisfactory explanation, the principal shall report the matter to the Director [of Child Protection].*

#### **Director investigates**

(2) *On receipt of a report under this section, the Director [of Child Protection] shall investigate the report and take the action that may be required by the regulations.”*

Our fundamental concern is that educational neglect or school absenteeism appears to be impacting the rights, interests and well-being of PEI children and youth and these children and youth appear to be falling between the cracks of various child-serving departments – Social Development and Housing, Education and Lifelong Learning, to include Education Authorities, and Health and Wellness, to include Health PEI.

As a starting point, school absenteeism or educational neglect is a child rights issue. Article 28 (1)(e) of the United Nations Convention on the Rights of the Child guarantees the right to education and places responsibility on government to:

*“take measures to encourage regular school attendance at schools and the reduction of drop-out rates.”*

On Prince Edward Island, as reported to our Office, children and youth are frequently absent from school for extended periods without reason, ranging from weeks to months to years. There are many reasons for children to be absent from school, such as anxiety, fear of COVID-19, mental health, addictions, parental abuse, neglect, poverty and family violence. Unfortunately, for far too many Island children and youth, this is their lived experience.

School absenteeism has been described as a silent social-educational child human rights issue impacting children and youth across our nation. When children and youth are routinely absent from school without reason, they risk falling behind in the curriculum, missing opportunities to participate in school-related activities and becoming socially isolated. For some children and youth, school absenteeism results in the child or youth disconnecting altogether from school and silently disappearing from the educational system.

Applying a child rights lens to this issue, University of Ottawa based researcher Anton Birioukov (2021) reminds us of the importance of upholding the participatory rights of children and youth in discussions on school absenteeism and educational neglect:

*“It is the absentees themselves that must be listened to. As a whole, absenteeism research has overlooked student voices in its investigations”* (McKay-Brown & Birioukov-Brant, 2021).

*“Speaking and listening to the students as to why they are absent, and what can be done to aid them in attending more frequently, should always be the starting point of our interventions.”* (Birioukov, 2021).

In 2019, the Office of the Child and Youth Advocate/Newfoundland and Labrador published a comprehensive report following a systemic review of chronic absenteeism in that province entitled *Chronic Absenteeism: When Children Disappear*, available at <https://www.childandyouthadvocate.nl.ca/files/ChronicAbsenteeismJan2019.pdf>. The Report provides a child-rights analysis highlighting that research, over many years and in many countries, indicates general agreement that factors contributing to chronic absenteeism relate to issues and problems within four areas: student factors; family factors; school factors; and, community factors. The Report recommends that various child-serving government departments come together and develop an action plan that should:

- a) Incorporate knowledge of best practices and results*
- b) Include community partners that provide services to children and youth*
- c) Provide appropriate resources for any pilots that emerge from the action plan*

- d) *Implement professional staff development highlighting chronic absenteeism as a possible indicator of child maltreatment*
- e) *Include an evaluation plan*

A second Report released by the Office of the Yukon Child and Youth Advocate in 2021, called *Review on School Attendance in the Yukon* [https://www.ycao.ca/files/ugd/a5713e\\_02f0f815cd9f460fb3f1cfde9118986f.pdf](https://www.ycao.ca/files/ugd/a5713e_02f0f815cd9f460fb3f1cfde9118986f.pdf) listed as one of its Recommendations:

*“Immediately create and fill full-time clinical counsellor positions in every school. These mental health counsellors must be in addition to school guidance counsellors. All counsellors must have a trauma-informed lens, cultural humility, and counselling approaches that are effective in a variety of settings. They will be knowledgeable about referrals for family treatment, community support and crisis response. As part of their everyday interactions, clinical counsellors will develop relationships with students, educators and families.”*

On May 30, 2022, I wrote to the Ministers of these three departments to outline my concerns and I am pleased to report to the Committee today that on July 28, 2022, Rona and I attended a meeting with senior representatives of the three departments to initiate a collaborative dialogue on this important child rights issue impacting PEI children and youth across the province. On September 22, 2022, I received a letter from the Deputy Minister of the Department of Education and Lifelong Learning and the Director of the Public Schools Branch which, in part, states:

*“Regular attendance in school is very important for a student’s overall growth and academic success. A Student Absenteeism Working Group with members from Education, Health, Child Protection and the Public Schools Branch has been developed. The working group will examine student attendance and engagement and develop an action plan to address issues.”*

The letter also indicates that our Office will be provided with updates and there is attached a document outlining various strategies and services used to support student engagement and regular attendance. This is an area that our Office will continue to monitor.

## **H) Student Complaint (Reporting) Policy and Procedures**

I will now turn my comments to the importance of a child-centered student complaint (reporting) mechanism in PEI schools. As human rights holders, children and youth

have the right to express their concerns and to have them taken seriously and addressed in a timely manner.

Once again, I will preface my comments with direct quotes from children and youth:

*“You need confirmation!! Confirm with the student it (follow up) will come into action. If one student knows and sees they were taken seriously, they will share that response and other students will come forward.”* – from a Youth

*“After you tell an adult – they need to come back to you – follow up – give you an update on the plan.”* – from a Youth

*“No more ‘I’ll look after it’ or ‘I’ll take care of it’ from adults.”* – from a Youth

*“Show action. Even a little – talk to us – don’t just say you will. Send an email. Something. Anything.”* – from a Youth

*“The process should not be behind the scenes, with the idea that consequences may or may not happen. It is always best to make you involved. Talk over with the student what happened, how long the process is going to be, tell the student the actions that will happen and what they will see occur.”* – from a Youth

---

Children and youth need to feel confident that their concerns are being taken seriously in our schools. As described in the UN *General Comment (No. 5) (2003), General Measures of Implementation*, to enable children to seek remedies for the breach of their rights, there ought to be “*effective, child sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance.*” The current student complaint (reporting) policy and procedure documents are inadequate.

Since the student protests last fall, our Office has been working with the Director of the Public Schools Branch, specifically, on a student complaint (reporting) policy and procedure. Under the current *Safe and Caring Learning Environments Operational Procedure Document*, a student can raise a concern to a teacher or a principal; however, there is the reality that this procedure may lead to a conflict of interest if the concern, for example, involves the child or youth’s teacher or principal, or the student approaches another teacher, who is a close friend of the alleged offending teacher.

Through a child rights analysis, every child and youth in every PEI school has the right to feel safe and confident to report to any trusted person within the school. The current 11-page Safe and Caring Learning Environments Operational Procedure, which includes reporting procedures for aggrieved students is cumbersome. It is neither child-centered, nor child and youth friendly. It also lacks access to other internal complaint levels within the Education Authority, if the student feels dissatisfied with the initial response. In addition, the current policy lacks transparency and accountability, with no time frames for responses identified. Nor is our Office listed as a resource for students who require a support person to assist them.

Additionally, members of the Child and Youth Advisory Committee to our Office have been consulted by representatives of the Public Schools Branch for their views on how a student complaint policy can be developed respecting child rights. A separate consultation, which we appreciate, has also taken place with staff of our Office.

As a result, the Education Authorities should continue to consult with children and youth and the Office of the Child and Youth Advocate in the development and implementation of new operational student complaint (reporting) policy and procedure documents that are child and youth-friendly and respect the right of students to be meaningfully heard.

The September 22, 2022, correspondence I received from the Deputy Minister of the Department of Education and Lifelong Learning and the Director of the Public Schools Branch, in part, speaks to a draft revised Safe and Caring Learning Environments Policy and Procedure, which focuses on establishing a variety of ways for students to report incidents which negatively impact them or the school climate, as well as other documents, including a new draft Student Incident Reporting Document for Students. I am pleased that this work is continuing, and I look forward to reviewing and having input into these new documents.

## **I) Student Appeal Mechanisms**

As a continuation of the importance of recognizing the rights of students to express their views freely and have them seriously considered, the current wording of the *Education Act* is deficient in restricting the ability of students to undertake appeals of school decisions. Only parents of students and students aged eighteen or older (or sixteen if they are judged to be living independently of parents) may appeal a suspension, an expulsion, or a decision that significantly affects the education, health or safety of a student to the Hearing Committee of the Education Authority (see sections 55, 1(1)(p) and 1(3)).



**“55 Significant decision affecting student**

- (1) *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.*

***Includes failure, refusal to make a decision***

- (2) *For the purposes of this section, a decision of an employee of an education authority from which an appeal may be taken, includes a failure or refusal to make a decision.*

***Hearing committee to hear appeal***

- (3) *Where the decision under appeal pertains to*  
(a) *the suspension of a student under section 51;*  
(b) *any conditions imposed on a student under section 51, whether imposed as part of a suspension or not; or*  
(c) *a decision of an employee of an education authority that significantly affects the education, health or safety of a student,*

*the hearing committee of the education authority shall hear the appeal.*

***Authority of appeal committee***

- (4) *The hearing committee of the education authority may, after hearing the appeal,*

- (a) *Where the hearing is in respect of a matter referred to in clause (3)(a) or (b),*  
(i) *confirm the suspension,*  
(ii) *increase or decrease the period of suspension,*  
(iii) *terminate the remaining period of suspension,*  
(iv) *impose additional conditions on the student,*  
(v) *vary conditions already imposed on the student, or*  
(vi) *terminate any conditions that remain in effect, or*  
(b) *where the hearing is in respect of a matter referred to in clause (3)(c),*  
(i) *confirm the decision of the employee, or*  
(j) (ii) *substitute its own decision in place of the decision appealed from.*

***Reasons for decision***

- (5) *The hearing committee of the education authority shall give written reasons for the decision within 10 days of the hearing, to*  
(a) *the student and parent of the student; and*

(b) *the person whose decision was appealed.*

**Decision final**

(6) *The decision of the hearing committee of the education authority on the appeal is final and binding on the student and the student's parent and shall not be appealed."*

"1(1)(p) **"Independent student"** means a student who is

(i) *18 years of age or older, or*

(ii) *16 years of age or older and*

(A) *In the opinion of the Director, is living independently of his or her parents, or*

(B) *Is party to an agreement under subsection 13(2) of the Child Protection Act;"*

**Parent's right vests in adult student**

"1(3) *Where by or under this Act any authority or right is vested in, or any obligation is imposed on, a parent of a student, the authority, right or obligation shall, where the student is an independent student, be vested in or imposed on the student."*

This lack of a legislated appeal mechanism leaves the vast majority of students with no means to directly appeal any alleged violation of their rights, unless their parents are willing to do so for them. This is a paternalistic approach that does not reflect evolving agency on the part of students who are children and youth.

As such, many students may have no way to overcome obstacles where a parent is unable or unwilling to initiate an appeal when it is the child's wish to do so. In turn, this compromises the child's right to express their views and access justice. These deficits call out for amendments to the PEI *Education Act*.

Here, Article 12 of the United Nations Convention on the Rights of the Child is instructive, as there is no minimum age for children to exercise their right to express their views freely in all matters affecting them and for those views to be given due weight.

Additionally, Article 28(2) of the United Nations Convention on the Rights of the Child reminds us that governments are obligated to:

*"take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with their rights"*

## Recommendations

- #1** The Department of Education and Lifelong Learning and the Education Authorities continue their efforts, in consultation with children and youth and the Office of the Child and Youth Advocate, to develop and implement a child rights model for inclusion of children and youth as active participants in education-related matters to ensure that their rights, interests and viewpoints are considered in matters affecting them.
- #2** The Department of Education and Lifelong Learning, in consultation with children and youth and the Office of the Child and Youth Advocate, propose amendments to the *Education Act*, to include a comprehensive child rights section for students.
- #3** The Department of Education and Lifelong Learning, in consultation with children and youth and the Office of the Child and Youth Advocate, propose amendments to the *Education Act*, to include the ability for a student who is a child or youth to access an independent appeal process that is child and youth friendly.
- #4** The Education Authorities continue their efforts to consult with children and youth and the Office of the Child and Youth Advocate in the development and implementation of new operational student complaint (reporting) policy and procedure documents that are child and youth-friendly and respect the right of students to be meaningfully heard.
- #5** The Department of Education and Lifelong Learning and Education Authorities, in consultation with the Office of the Child and Youth Advocate, in response to the United Nations Committee on the Rights of the Child’s Concluding Observations issued to Canada and dated June 23<sup>rd</sup>, 2022, continue to “strengthen efforts to promote the development of a culture of human rights in the education system, and
- a) Conduct a mapping of how children’s rights, as articulated in the Convention, are incorporated into provincial education legislation, curricula, policies, and practices [in Prince Edward Island];
  - (b) Ensure that human rights education and the principles of the Convention are integrated into the mandatory school curriculum [in Prince Edward Island] ... and ensure that training on children’s rights is compulsory for teachers and professionals working with and for children; and

- (c) Develop human rights education materials that foster respect for, and appreciation of, diversity and ensure that teachers receive the necessary support to teach children's rights in schools [in Prince Edward Island].”

**#6** The Education Authorities directly and meaningfully seek the views of children and youth, in consultation with the Office of the Child and Youth Advocate, in the determination of whether school dress codes are necessary, or should be implemented on a consistent basis at all schools in Prince Edward Island. If school dress codes are ultimately found to have merit by the Education Authorities, then children and youth should participate fully, in consultation with the Office of the Child and Youth Advocate, in the development and implementation of any provincial dress code policy.

## **Conclusion**

In conclusion, I wish to stress that children's rights are human rights. Governments have a duty to protect and promote children's rights by embedding them in legislation. This ensures that the necessary legal frameworks are established in law. Regulations and policies provide the details of how programs and services are to be administered, but legislation provides the legal obligations necessary to ensure the realization of child rights for every child and youth in PEI.

I close my presentation with the important words from a youth reflecting on every child and youth's human right to safety and education:

*“All I want is to feel safe and comfortable in my school”* – from a Youth

Respectfully submitted this 17<sup>th</sup> day of October, 2022 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