

**Response to the Department of Education's Proposed Amendments
to the 2008 *Education Act***

Submitted by the Representative for Children and Youth's Office

September 2, 2016



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NUTAQQANUT INULRAMIRNULLU
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REPRÉSENTANT DE
L'ENFANCE ET DE LA JEUNESSE

REPRESENTATIVE FOR
CHILDREN AND YOUTH

INTRODUCTION

The Representative for Children and Youth's (RCY) office is pleased to make this submission to the Department of Education (DOE) regarding revision of the 2008 *Education Act*. This submission falls under the RCY office's legal duty to make recommendations on child and youth-related legislation.

The RCY's office commends the Department of Education in its stated goal to "make the necessary changes to establish the best education system possible for students, teaching professionals and communities."¹ Furthermore, the office recognizes that such changes will require amendments to the legislation. However, in reviewing *A Collective Vision: Policy Intentions for the Proposed Amendments to the 2008 Education Act*,² we noted that the proposed amendments left significant omissions in regards child rights. Our submission focuses on these omissions.

The RCY's office is concerned that the proposed amendments to Nunavut's *Education Act* do not reflect Canada and Nunavut's commitment to the United Nations *Convention on the Rights of the Child* (CRC) – a legally binding document that Canada ratified in 1991. The RCY's office makes this submission to press the Department of Education to include reference to the CRC as a guiding principle to the revised *Education Act* and to pay particular attention to respecting the right of the child to participate in his or her education. Doing so would support Nunavut's obligation to implement the CRC and, more importantly, empower children and youth in Nunavut, both individually and as a whole.

BACKGROUND

The Representative for Children and Youth's Mandate

The Representative for Children and Youth (RCY) is an independent officer who ensures the Government of Nunavut (GN) supports and protects the rights and

¹ Department of Education. Retrieved from <http://www.gov.nu.ca/information/public-consultation-amendments-education-act>

² Department of Education. *A Collective Vision: Policy Intentions for the Proposed Amendments to the 2008 Education Act* 2016, Iqaluit

interests of young Nunavummiut. The Representative's duties and powers are identified in the *Representative for Children and Youth (RCY) Act*.

Some of the duties include:

- protecting the rights and interests of young Nunavummiut – as individuals and as a whole
- making sure government departments hear and consider young Nunavummiut's views on issues that affect them
- ensuring young people can access government services
- making recommendations to government departments on child and youth-related legislation, policies, programs and services

The work of the RCY's office is guided by the United Nations *Convention on the Rights of the Child (CRC)*³, Inuit societal values (ISV), the voice of the child, and national advocacy standards set by the Canadian Council of Child and Youth Advocates.

The United Nations *Convention on the Rights of the Child (CRC)*

Of particular importance to this submission is the consideration of the United Nations *Convention on the Rights of the Child (CRC)*. The Convention is a legally-binding agreement setting out the civil, political, economic, social, and cultural rights of every child. The CRC defines children in article 1 as “every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.”

When Canada ratified the CRC in 1991⁴, it committed to provide children and youth with all they need to live and develop to their fullest potential. Children have the same human rights as adults. But because children and youth are more vulnerable

³ United Nations General Assembly.(1989)

⁴ Canada ratified the *Convention on the Rights of the Child* on December 13, 1991. On January 12, 1992 the CRC came into force in Canada.

<http://www.parl.gc.ca/Content/SEN/Committee/381/huma/rep/rep19nov05part1-e.htm>

than adults they sometimes need special support and protection. The CRC provides such support and protection and guarantees the status of children as rights holders.

The CRC contains 54 articles setting out the rights of the child and the roles and responsibilities governments and families have in supporting child rights. It's important to note that the rights of the child identified in the CRC cannot be divided from each other and no single right is more important than another. That said, for brevity's sake, our submission only refers in detail to the articles most relevant to the notable omissions in the proposed changes to the *Education Act*. However, we strongly encourage the Department of Education to apply a rights-based lens to all legislative reform, paying particular attention to articles 28 and 29. These articles focus on the right to education and the purposes of education.

OMISSIONS IN THE PROPOSED CHANGES TO THE *EDUCATION ACT*

Omission 1: Nunavut's obligation to treat children as rights holders

As a result of ratifying the CRC, the federal, provincial and territorial governments have the obligation to consider Canadian children as rights holders. This means that every child in Nunavut inherently has the rights outlined in the CRC and the Government of Nunavut must take all necessary steps to ensure these rights.

Article 4 of the CRC sets out how governments should implement child rights. It asserts that “*State Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.*”

Implementation of the CRC is monitored by the UN Committee on the Rights of the Child. The Committee has identified that effective implementation by a State requires enactment of laws that take into account the obligations under the CRC by governments with jurisdiction over a particular issue, such as education or health. In Canada this places the obligation on provinces and territories, as well as the federal government.⁵

⁵ UNICEF. *Implementation Handbook for the Convention on the Rights of the Child* 2007, p. 54

Nunavut's *2008 Education Act*, however, does not contain any reference to the CRC and there is no clear indication that the current Act recognizes children as rights holders. In contrast, reference to the CRC is included in other Nunavut statutes such as the *Child and Family Services Act (CFSA)*, and the *Representative for Children and Youth (RCY) Act*. The *CFSA* lists the principles by which it is to be administered and interpreted, including the principle to be consistent with the CRC. The *RCY Act* states that Nunavut will not only uphold but bring the CRC to bear within the territory:

“Affirming Nunavut’s commitment to the implementation of the United Nations *Convention on the Rights of the Child*, adopted by the General Assembly of the United Nations on November 20, 1989 and ratified by Canada on December 13, 1991....”

In addition, the *Youth Criminal Justice Act*, a federal statute impacting Nunavummiut aged 12 to 18, expressly acknowledges that Canada is a party to the CRC and that children have guaranteed rights.

The current work by the Department of Education (DOE) to revise the *Education Act* provides the Government of Nunavut an excellent opportunity to enshrine child rights in the education system. Unfortunately, the proposed amendments do not currently take advantage of this. Instead, the *Education Act* risks remaining child-centered legislation that does not recognize the rights of the very people it is designed to support. In addition, such a continued omission does not align with Nunavut’s stated commitment, as outlined in the *RCY Act*, to implement the CRC.

The RCY’s office therefore recommends expressly including commitment to the CRC as a guiding principle in the administration and interpretation of the revised *Education Act*. Including such a commitment in the proposed revisions would demonstrate the high value the DOE places on the rights held by young Nunavummiut thereby also upholding Nunavut’s commitment to child rights and the implementation of the CRC.

Omission 2: Children’s participation rights within the education system

Engaging children and youth in decision-making processes affecting their lives is an important right under article 12 of the CRC. Simply stated, when adults are making decisions that affect children, children have a right to say what they think and to have

their opinions given due consideration. It does not mean that such opinions should be automatically endorsed.⁶

Within Nunavut's education system, children and youth should not be mere beneficiaries of services and supports, but rather active participants. Their views can serve to enrich decision-making processes and they themselves can serve as powerful change agents. However, in order to be effective, participation needs to be genuine and meaningful; not a form of tokenism.

Bearing this in mind, the RCY's office is making three recommendations to improve young Nunavummiut's participation in the territory's education system.

2a. A child's right to participate in the development of policies, procedures and legislation.

In the December 2015 response from the Special Committee to Review the *Education Act*, it was recommended that future reviews and consultations seek specific input from Nunavut students, as well as address their insights on how Nunavut's education system has supported or failed them in achieving their educational goals.⁷

This recommendation from the Special Committee gives life to article 12 of the CRC. Under this article, government has an obligation to support the right of a child who can form an opinion to express it in matters that affect him or her. This means government must consider and give due weight to a child's opinion, based on the child's capacity and circumstances. It's important to note that under the CRC, the concept of evolving capacity is not tied to age. Instead, the CRC acknowledges that children develop toward the autonomy of adulthood at varying rates. Simply stated, there is no strict age cut-off for seeking out a child's opinion.

In the education system, the participation of children in policy, program and legislation development is particularly relevant. Children, after all, are the education system's primary stakeholders and the best source of information about their needs. The benefit is obvious; engaging children and youth in a meaningful way will result in

⁶ UNICEF. Fact Sheet: The right to participation. Retrieved from www.unicef.org/crc/files/Right-to-Participation.pdf

⁷ Legislative Assembly of Nunavut. *Final Report – Special Committee to Review the Education Act*, Iqaluit, 2015

stronger and more sustainable legislation and policy, leading to overall improvement to Nunavut's education system.

The RCY's office recommends that the Department of Education deliberately and thoughtfully seek input from past and present students when developing policies and procedures in support of the revised *Education Act* and in future legislative reform.

2b. A child's right to participate in administrative proceedings.

Substantial violation of the participation rights of young Nunavummiut exists in the 2008 *Education Act* with respect to administrative proceedings related to suspension and expulsion. The second paragraph of article 12 of the CRC is particularly relevant to the school life of children and youth. It states:

*"... the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body..."*⁸

Guidance on how government should implement this right can be found in UNICEF's *Implementation Handbook for the Convention on the Rights of the Child*.

Suspension and expulsion from school, choice of school, and formal assessments are examples of administrative proceedings in which the student has the right to be heard. UNICEF calls for a "legislative framework and procedures that provide for consultation with school students as a group, and also for ascertaining and paying due attention to the views of the individual children concerning individual decisions on education."⁹

Other jurisdictions in Canada already recognize the child's right to participate in such procedural matters. The Northwest Territories *Education Act* allows students to apply to review both suspensions and expulsions, as well as to participate in the actual review process affecting them. Similarly, the Yukon *Education Act* allows students to appeal, as well as participate in, the review process regarding suspension. Neither of these Acts limit a child's ability to participate according to their age.

⁸ United Nations General Assembly.(1989)

⁹ UNICEF. *Implementation Handbook for the Convention on the Rights of the Child* 2007, p. 167

In Nunavut, students do not have the opportunity to exercise the same right to participate in formal suspension and/or expulsion reviews as their counterparts from other jurisdictions. Sections 63 and 65 of the 2008 *Education Act* outline the procedure for suspensions and expulsions by the principal or the District Education Authority (DEA). But these only provide for consultation with the affected student if he or she is an adult. Otherwise the Act only mandates consultation with parents. In addition, only an adult student or parents of a minor child can appeal such decisions.¹⁰

Excluding minor students from initiating and actively participating in administrative proceedings is a substantial violation of their participation rights and is discriminatory. The RCY's office recommends the Department of Education address this in the current legislative reform.

2c. Additional provisions to strengthen student participation in the work of district education authorities.

As well as the legal obligations under the CRC, supporting children's participation rights can enable children to develop to “*full potential, to gain confidence, to use their initiative and creativity, to gain life skills and make informed decisions.*”¹¹ These benefits directly support the Department of Education's vision for young Nunavummiut, as well as the Government of Nunavut's Sivumut Abluqta mandate.

The district education authorities (DEAs) currently have an important role to play in the education system at the local level and the 2008 *Education Act* provides for student participation in DEA meetings.¹² However the DEA has discretion regarding whether these elected student representatives can attend committee and subcommittee meetings. Our office recognizes that there may be circumstances in which a requirement for confidentiality precludes participation. The current Act though does not make it clear on what grounds the DEA may decide to exclude the elected student representative. In addition, the elected students do not have voting privileges at DEA meetings. In the RCY office's view, this falls short of meaningful participation.

¹⁰ Dispute Resolution Regulations (NU Reg 012-2012)

¹¹ UNICEF. Fact Sheet: The right to participation. Retrieved from www.unicef.org/crc/files/Right-to-Participation.pdf

¹² 2008 *Education Act* s(134)

The RCY's office recommends strengthening student participation in the work of the DEAs. The DOE should add clearer provisions indicating under what grounds DEAs can exclude student representatives from participating in committee and subcommittee meetings. It should also establish voting privileges for the elected student representatives.

CONCLUSION

The current Government of Nunavut mandate, as expressed in *Sivumut Abluqta: Stepping Forward Together*, stresses the importance of a strong education system for the future of the territory.

In the section titled "Self-reliance and optimism through education and training" the government states: "Education is the foundation for employment and self-reliance of individuals and families. Government, communities, teachers, parents, and students share responsibility for improving education outcomes to provide the best possible opportunities for the future."¹³

It's striking that students are expected to improve outcomes in the education system yet their fundamental right to participate in developing the legislative and policy framework and administrative proceedings affecting them is inadequately supported in the 2008 *Education Act*. Current proposed amendments to the Act fail to address these shortcomings. Therefore the RCY's office makes the following recommendations:

1. Expressly include commitment to the CRC as a guiding principle in the administration and interpretation of the revised *Education Act*.
2. Deliberately and thoughtfully seek input from students past and present when developing policies and procedures in support of the revised *Education Act* and in future legislative reform.

¹³ Government of Nunavut. *Sivumut Abluqta: Stepping Forward Together*, 2014, Iqaluit

3. Address the exclusion of minor students from initiating and actively participating in administrative proceedings, particularly those that pertain to student suspension and/or expulsion.
4. Strengthen student participation in the work of the DEAs by adding clearer provisions in the legislation and establishing voting privileges for the elected student representatives.

The RCY's office makes these recommendations in support of Nunavut's children and youth and in the spirit of collaboration with the Department of Education. The RCY's office believes adopting such recommendations is essential to realizing the Government of Nunavut's commitment to upholding young Nunavummiut's rights under the CRC.

We thank you for the opportunity to contribute to this important work and we look forward to following how the DOE responds to the recommendations put forward. We would be happy to discuss our submission with Department of Education officials at any time during the next stage of legislative reform.