

**Representative for Children and Youth's Submission on the
Department of Education's Proposed Amendments to the 2008 *Education Act***

November 29, 2018



ᐃᑕᑦᑲᐅᐅᑦ ᐅᑲᑲᑲᑲᑲᑲ
ᐅᑲᑲᑲᑲᑲᑲ

NUTAQQANUT INULRAMIRNULLU
UQAQTIKHAANIK

REPRÉSENTANT DE
L'ENFANCE ET DE LA JEUNESSE

REPRESENTATIVE FOR
CHILDREN AND YOUTH

Introduction

The Representative for Children and Youth's Office (RCYO) is pleased to make this submission to the Department of Education regarding its proposed amendments to the *Education Act* and the *Inuit Language Protection Act*. This submission falls under the RCYO's legal duty to make recommendations on child and youth-related legislation, as per section 3(e) of the *Representative for Children and Youth Act* (RCYA).

In 2016, the RCYO made a submission to the Department of Education regarding its proposed amendments to the *Education Act*. The submission contained four recommendations in support of protecting and advancing the rights and interests of young Nunavummiut individually and as a whole. The RCYO was pleased to learn that three of the four recommendations made were accepted by the Department of Education. However, due to Bill 37 being rejected by Members of the Legislative Assembly of Nunavut upon the recommendation of the Standing Committee on Legislation in the fall of 2017, these recommendations were not adopted.

The fifth Legislative Assembly of Nunavut prioritized making amendments to the *Education Act* and the *Inuit Language Protection Act*. In *Turaaqtavut*, the Government of Nunavut committed "to provide quality schooling, improve student outcomes and strengthen Inuktitut."¹ As the Government of Nunavut works toward achieving these goals through legislative review and reform, the RCYO offers the recommendations outlined in this submission with a shared goal in mind; to develop an education system that protects and advances young Nunavummiut's rights to education, culture, and language. This submission is guided by the United Nations *Convention of the Rights of the Child* (CRC) and the Inuit societal value of *piliriatigiinniq/ ikajuqtigiinniq*, working together for a common cause.

The United Nations Convention on the Rights of the Child

Of importance to this submission is consideration of the CRC. The CRC is a legally-binding agreement setting out the civil, political, economic, social, and cultural rights of every child. Children are typically defined as individuals under the age of 18 years.

When Canada ratified the CRC in 1991, it committed to providing children and youth with all they need to live and develop to their fullest potential. Children and youth have the same human rights as adults. However, because children and youth are more vulnerable 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 these rights. It is 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. For the purpose of this submission, the RCYO has focused largely on Articles 3, 12, 28, 29, and 30.

Article 3 of the CRC states that in all actions concerning children and youth, their best interests shall be a primary consideration. To do so, this article emphasizes, in part, that government must ascertain the impact of their actions on children and youth, including actions undertaken by public institutions, administrative authorities, or legislative bodies.²

Article 12 of the CRC states that any child or youth capable of forming an opinion has the right to express their opinion freely in all matters affecting them, particularly in any judicial or administrative proceedings. The opinion of the child or youth are given due weight in accordance with their age and maturity. Children and youth are individuals with opinions and feelings of their own, and their voice must be considered by those who are making decisions that affect their lives.³

As laid out in Articles 28 and 29 of the CRC, children and youth have a right to education — an education that develops the child’s personality, talents, and abilities to the fullest and encourages respect for others, human rights, and their own and other cultures.⁴ Education must also be achieved on the basis of equal opportunity, which is especially relevant for children and youth who have disabilities, are minorities, or who are from rural communities.⁵

Article 30 of the CRC speaks to children’s right to learn about and practice their own culture and language.

Recommendations Previously Made to the Department of Education

In September 2016, the RCYO made four recommendations to the Department of Education regarding amendments to the *Education Act*. These recommendations were based upon the RCYO’s view that the proposed amendments, at that time, did not reflect Canada and Nunavut’s commitment to the CRC — a legally binding document that Canada ratified in 1991¹. The recommendations were:

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.
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.

¹ Canada ratified the United Nations *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>

4. Strengthen student participation in the work of the District Education Authorities by adding clearer provisions in the legislation and establishing voting privileges for the elected student representatives.

In September 2018, the Department of Education confirmed that three of the recommendations previously made by the RCYO would be included in the draft legislation to be submitted to the Legislative Assembly in the spring of 2019. These recommendations include recommendations #1, #3, and #4, as outlined above.

While the May 2018 Legislative Proposal⁶ indicates the Department will move forward with adding recommendation #3 — the right for students who are minors to participate in administrative hearings (inclusive education appeals, discipline decisions, and appeals), it does not address an important aspect of the RCYO’s recommendation; minor students’ ability to initiate these proceedings. We are recommending the Department re-visit this aspect of the recommendation and in doing so, take into consideration recommendation #8 of this submission — introducing the concept of mature minors in the *Education Act*.

In September 2018, the RCYO encouraged the Department to seek input from students, as outlined in recommendation #2 — to ensure the voices and opinions of young Nunavummiut are considered — as the Department moves forward with amending the *Education Act*. This was not the first time the importance of youth engagement was brought to the Department’s attention by our office. In August 2018, the RCYO sent the Minister of Education a letter that encouraged the Department to support Article 12 of the CRC by connecting with young Nunavummiut to hear what they have to say about their education and to reflect their thoughts and concerns in the proposed amendments. A response from the Department stated: “We are looking forward to the consultations and hoping to hear from all Nunavummiut. We encourage youth as well to use their voices and be heard.”⁷

Encouraging the Department to seek the input of students was also a recommendation made by the Special Committee to Review the *Education Act*ⁱⁱ (Special Committee):⁸

The Special Committee recommends that future reviews and consultations on the *Education Act* seek specific input from Nunavut students and address their insights on how they feel Nunavut’s education system has supported or failed them in achieving their educational goals.

In the Department of Education’s responseⁱⁱⁱ to the Special Committee,⁹ the Department agreed that students, including recent graduates, “be consulted and engaged with during future reviews.”¹⁰ This should include the current amendments to the *Education Act*, especially when considering the direct impact this legislation will have on the lives of children and youth across the territory.

While it appears that the Department is receptive to considering children and youth’s opinions, there does not appear to be a solid plan in place to engage with children and youth as part of the current

ⁱⁱ November 2015

ⁱⁱⁱ December 2015

consultation process. Without targeted youth consultations planned, the responsibility falls to young Nunavummiut to engage with the Department on the proposed amendments as part of the general public. This does not satisfy the Department's agreement that students "be consulted and engaged with during future reviews"¹¹ and is a major shortcoming of the current consultation process.

Additional Recommendations

In the time since the RCYO's September 2016 submission was made, our office has worked with many children, youth, families, and service providers across the territory. As a result of this work, additional recommendations with respect to the *Education Act* have been identified. The RCYO continues to endorse the initial four recommendations made to the Department in 2016, and offers four additional recommendations in support of Nunavut's children and youth.

Recommendation #5: The Department of Education deliver Early Childhood Education programs in all communities in Nunavut.

As outlined in *Illinniariliriniq Turaaqpalliajavut Our Goals for Education*,¹² the Department is proposing that District Education Authorities (DEAs) will have the first choice in providing Early Childhood Education (ECE) programming with the support of the Department and DEA Council. It is further proposed that DEAs that choose to provide ECE programming deliver this programming themselves and not use third-party providers. Should DEAs choose not to provide ECE programming, the Department will do so, ensuring that government funding for ECE programming is fully used.

Effective ECE programming can benefit children — particularly disadvantaged children — by improving educational outcomes through improvements in cognitive ability, mathematical skills, and literacy.¹³ Children who attend effective ECE programming develop better human capital skills that may help them find better jobs and earn higher incomes than children who do not attend similar programs.¹⁴ In addition to the potential educational and employment opportunities that children may benefit from as a result of effective ECE programming, there are also economic benefits. For every \$1 invested into ECE, there is an estimated return of \$3.60.¹⁵

It is the RCYO's view that every child, in every community in Nunavut, should have equal access to quality ECE programming. The RCYO recommends that these programs be made affordable for Nunavummiut and delivered by qualified, bilingual ECE teachers who are employees of the Government of Nunavut. As the Department has stated, the use of a multi-model approach to bilingual education to best meet local needs has contributed, in part, to creating significant inconsistencies between schools and negatively impacting the delivery of the education program.¹⁶ The RCYO believes the same applies to ECE and while our office acknowledges the important role of DEAs, the Department may be better positioned to ensure that effective ECE programming is consistently provided to all children across the territory, thereby assisting them to realize their full potential.

Recommendation #6: Prioritize the recruitment of young Inuit into the teaching profession under the Inuit Employment Plan.

Attracting, recruiting, and retaining sufficient numbers of motivated and committed teachers has become a global policy issue.¹⁷ Like other jurisdictions, Nunavut faces teacher shortages. In the Office of the Auditor General's (OAG) 2013 report on the 2008 *Education Act*, capacity was reported as an issue with the implementation of the Act, of which high turnover was identified as a contributing factor.¹⁸

Another key area of concern noted in the OAG's review of the Act was bilingual education. Bilingual education plays an essential role in the preservation, promotion, and revitalization of Inuktitut.¹⁹ The implementation of bilingual education in Nunavut has a direct impact on young Nunavummiut's rights as outlined in Articles 28, 29, and 30 of the CRC.

The Department is proposing an extension to bilingual education deadlines, with implementation timelines based on the Department's Inuit Employment Plan (IEP). One aspect of implementing an updated IEP is to increase the number of Inuit working in education through intensified recruitment efforts.

It has been stated that "the path to becoming a teacher occurs far in advance of teachers accepting their teaching assignments, beginning, in earnest, at the secondary school level or earlier."²⁰ Developing tomorrow's teachers begins with today's students, and a growing body of literature supports recruiting people from communities to teach in the communities from which they come.²¹ Recruiting young Nunavummiut into the teaching profession is key to addressing the high rate of staff turnover and realizing bilingual education in Nunavut. For this reason, the RCYO recommends that the Department's intensified recruitment efforts under the updated IEP include prioritizing the recruitment of young Inuit into the teaching profession.

Recommendation #7: Add definitions of inclusive education and student supports to the *Education Act*, and ensure children, youth, and their families are made aware of the supports that are available to them. The definitions for education program and school program should also be clarified in the legislation, including which matters fall under each program and who is responsible for tending to these matters.

Governments are responsible for ensuring children's rights are respected, protected, and fulfilled, including creating environments where children can grow and reach their full potential. This is of particular importance in the education system.

In the preamble of the 2008 *Education Act*, it is stated that this legislation is enacted, in part, based upon the affirmation "that all children can learn, that learning is an individual process, and that diverse learning needs and abilities should be supported in an inclusive education system."²² Article 28 of the CRC states that children have a right to education — an education that develops each child's personality, talents, and abilities to the fullest.²³ While inclusive education appears to align with this child right, the

concept is not defined within the legislation, which may lead to uncertainty as to what inclusive education entails.

In a 2014 submission made to the Chair of the Special Committee on the Review of the *Education Act*, the Department recommended adding definitions for inclusive education and student support services to section 3 of the Act.²⁴ The RCYO supports the Department's recommendation to add these two definitions to the legislation. However, because not all supports are a service, the RCYO mirrors the recommendation made in the *External Review of Inclusive Education*²⁵ that the term 'supports' is a more suitable term than 'student support services'.

Adding these definitions to the legislation ensures a common understanding of these terms, and reduces uncertainty as to what supports or services young Nunavummiut are entitled to. Children, youth, and their families must be aware of what supports are available to them, whether laid out in legislation or departmental documentation, as a lack of information may impede the child's right to develop to their fullest potential.

In addition, clarity is required with two existing definitions in this legislation — school program and education program, and the matters that fall under each and who is responsible for tending to these matters (i.e., DEAs or the Department).

Recommendation #8: Introduce the concept of mature minors to the *Education Act* to reduce barriers for minor students who wish to make decisions on their own behalf, and who have the maturity to do so.

As outlined in Nunavut's *Age of Majority Act*, every person attains the age of majority, and ceases to be a minor, on attaining the age of 19 years.²⁶ In the *Education Act*, there are a number of sections that speak to parents acting on behalf of minors, or of students being able to act on their own behalf, if they are an adult. For example, as laid out in section 31 of the *Education Act*:

Registration of minor

(2) If the individual is a minor, the parents of the individual may register the individual at a school.

Registration of adult

(3) If the individual is an adult, the individual may register himself or herself at a school.

In this example, minor students who are not registered for school by their parents, and who wish to register themselves, encounter barriers to do so under the legislation in its current form. It is important to note that this is not a hypothetical scenario, it has occurred in recent years, and has been brought to the attention of the RCYO for advocacy support.

In order to reduce barriers that minor students face when they wish to make decisions on their own behalf, the RCYO recommends that the concept of mature minors is introduced in the proposed amendments to the *Education Act*. Although there is less information available about mature minors

with respect to education and schooling in Canada,²⁷ the concept of mature minors is known in healthcare and social work.²⁸⁻²⁹

An excerpt from a Department of Health clinical guideline³⁰ states, in part, that:

Where a minor (under the legal age of majority, which is 19), has reached the point where they have sufficient intelligence and understanding to appreciate the nature and consequences of the treatment that has been proposed, the minor can be treated as a mature minor. A mature minor's decision making capacity is not solely based on a patient's chronological age. Young people are presumed capable if they are able to understand their medical condition and the available treatment or diagnostic options. As well, the patient must be able to understand the risks and benefits and foreseeable outcomes related to testing and treatment, as well as non-treatment. If a minor has the capacity to consent, health care practitioners must abide by the minor's decision, even if the minor's parents or legal guardians do not agree with it.

Information received by the RCYO from the Department of Health³¹ notes the following with respect to mature minors and age:

- There is no fixed rule;
- The determination is made on a case-by-case basis;
- Children as young as 12 have been assessed as mature minors;
- Generally speaking, minors aged 16-18 are likely to be mature.

Introducing the concept of mature minors in the revised *Education Act* would reduce barriers for minor students who wish to make decisions on their own behalf, and who have the maturity to do so. This recommendation aligns with Article 12 of the CRC, which speaks to government's obligation to consider and give due weight to a child's opinion, based on the child's capacity and circumstances.

Conclusion

As the Department of Education works toward introducing an amended bill to the Legislative Assembly of Nunavut in the spring of 2019, the RCYO offers the following recommendations in the interest of protecting and advancing the rights of young Nunavummiut:

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.

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 District Education Authorities by adding clearer provisions in the legislation and establishing voting privileges for the elected student representatives.
5. The Department of Education deliver Early Childhood Education programs in all communities in Nunavut.
6. Prioritize the recruitment of young Inuit into the teaching profession under the Inuit Employment Plan.
7. Add definitions of inclusive education and student supports to the *Education Act*, and ensure children, youth, and their families are made aware of the supports that are available to them. The definitions for education program and school program should be clarified in the legislation, including which matters fall under each program and who is responsible for tending to these matters.
8. Introduce the concept of mature minors to the *Education Act* to reduce barriers for minor students who wish to make decisions on their own behalf, and who have the maturity to do so.

The RCYO makes these eight recommendations in support of Nunavut's children and youth and in the spirit of collaboration with the Department of Education.

References

- ¹ Government of Nunavut, Department of Education (2018). *Illinniariliriniq Turaaqpalliajavut Our Goals for Education*. Retrieved from [https://www.ourgoalsforeducation.ca/sites/default/files/Files/Backgrounder/2018-08%20\(EDU\)%20ED%20Act%20Backgrounder-FINAL_ENG.PDF](https://www.ourgoalsforeducation.ca/sites/default/files/Files/Backgrounder/2018-08%20(EDU)%20ED%20Act%20Backgrounder-FINAL_ENG.PDF)
- ² UNICEF (2007). Implementation Handbook for the Convention on the Rights of the Child. Retrieved from https://www.unicef.org/publications/index_43110.html
- ³ UNICEF (2007). Implementation Handbook for the Convention on the Rights of the Child. Retrieved from https://www.unicef.org/publications/index_43110.html
- ⁴ UNICEF (2007). Implementation Handbook for the Convention on the Rights of the Child. Retrieved from https://www.unicef.org/publications/index_43110.html
- ⁵ UNICEF (2007). Implementation Handbook for the Convention on the Rights of the Child. Retrieved from https://www.unicef.org/publications/index_43110.html
- ⁶ Government of Nunavut, Department of Education (24 May 2018). Legislative Proposal. An Act to Amend the *Education Act* and the *Inuit Language Protection Act*. Retrieved from http://nunatsiaq.com/stories/article/65674gn_seeks_to_head_off_potential_nti_lawsuit_on_education_language_legis
- ⁷ Government of Nunavut, Department of Education (24 August 2018). Personal Communication.
- ⁸ Special Committee to Review the Education Act (2015). Final report. Third Session Fourth Legislative Assembly. Retrieved from <http://assembly.nu.ca/sites/default/files/Report%20of%20the%20Special%20Committee%20to%20Review%20the%20Education%20Act%20-%20November%202015%20-%20English.pdf>
- ⁹ Government of Nunavut, Department of Education (2015). Re: Response of the Department of Education to the Report of the Special Committee to Review the *Education Act*.
- ¹⁰ Government of Nunavut, Department of Education (2015). Re: Response of the Department of Education to the Report of the Special Committee to Review the *Education Act*. p.2.
- ¹¹ Government of Nunavut, Department of Education (2015). Re: Response of the Department of Education to the Report of the Special Committee to Review the *Education Act*. p.2.
- ¹² Government of Nunavut, Department of Education (2018). *Illinniariliriniq Turaaqpalliajavut Our Goals for Education*. Retrieved from [https://www.ourgoalsforeducation.ca/sites/default/files/Files/Backgrounder/2018-08%20\(EDU\)%20ED%20Act%20Backgrounder-FINAL_ENG.PDF](https://www.ourgoalsforeducation.ca/sites/default/files/Files/Backgrounder/2018-08%20(EDU)%20ED%20Act%20Backgrounder-FINAL_ENG.PDF)
- ¹³ Conference Board of Canada (2017). Ready for life: A socio-economic analysis of early childhood education and care. Retrieved from <https://www.conferenceboard.ca/e-library/abstract.aspx?did=9231>
- ¹⁴ Conference Board of Canada (2017). Ready for life: A socio-economic analysis of early childhood education and care. Retrieved from <https://www.conferenceboard.ca/e-library/abstract.aspx?did=9231>
- ¹⁵ Conference Board of Canada (2017). Ready for life: A socio-economic analysis of early childhood education and care. Retrieved from <https://www.conferenceboard.ca/e-library/abstract.aspx?did=9231>
- ¹⁶ Government of Nunavut, Department of Education. (2018). Language Proficiency. Retrieved from <https://www.ourgoalsforeducation.ca/en/language-proficiency>
- ¹⁷ United Nations Educational, Scientific and Cultural Organization (2016). The world needs almost 69 million new teachers to reach the 2030 educational goals. Retrieved from <http://unesdoc.unesco.org/images/0024/002461/246124e.pdf>
- ¹⁸ Office of the Auditor General of Canada (2013). Report of the Auditor General of Canada to the Legislative Assembly of Nunavut – 2013. Education in Nunavut. Retrieved from http://www.oag-bvg.gc.ca/internet/docs/nun_201311_e_38772.pdf

- ¹⁹ Government of Nunavut, Department of Education (2018). *Illinniariliriniq Turaaqpalliajavut Our Goals for Education*. Retrieved from [https://www.ourgoalsforeducation.ca/sites/default/files/Files/Backgrounder/2018-08%20\(EDU\)%20ED%20Act%20Backgrounder-FINAL_ENG.PDF](https://www.ourgoalsforeducation.ca/sites/default/files/Files/Backgrounder/2018-08%20(EDU)%20ED%20Act%20Backgrounder-FINAL_ENG.PDF)
- ²⁰ Valenzuela, A. (2017). Grow your own educator programs: A review of the literature with emphasis on equity-based approaches. p 3. Retrieved from <https://files.eric.ed.gov/fulltext/ED582731.pdf>
- ²¹ Valenzuela, A. (2017). Grow your own educator programs: A review of the literature with emphasis on equity-based approaches. Retrieved from <https://files.eric.ed.gov/fulltext/ED582731.pdf>
- ²² Education Act (2008, c.15). Retrieved from <https://www.gov.nu.ca/sites/default/files/e2008snc15.pdf>
- ²³ Office of the United Nations High Commissioner for Human Rights (2017). *Convention on the rights of the child*. Retrieved from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>
- ²⁴ Government of Nunavut, Department of Education (2014). Submission to the Chair of the Special Committee on the review of the Education Act. Retrieved from [http://www.assembly.nu.ca/sites/default/files/TD%2060-4\(3\)%20EN%20Special%20Committee%20on%20Education%20written%20submissions.pdf](http://www.assembly.nu.ca/sites/default/files/TD%2060-4(3)%20EN%20Special%20Committee%20on%20Education%20written%20submissions.pdf)
- ²⁵ Hall, B. (2015). Reaching and teaching all students – A model to guide the practice of inclusive education in Nunavut. Final report of the external review of inclusive education. Retrieved from [http://www.assembly.nu.ca/sites/default/files/TD%20137-4\(3\)%20EN%20Reaching%20and%20Teaching%20All%20Students-A%20Model%20to%20Guide%20the%20Practice%20of%20Inclusive%20Education%20in%20Nunavut.%20Final%20Report%20of%20the%20External%20Review%20of%20Inclusive%20Education.pdf](http://www.assembly.nu.ca/sites/default/files/TD%20137-4(3)%20EN%20Reaching%20and%20Teaching%20All%20Students-A%20Model%20to%20Guide%20the%20Practice%20of%20Inclusive%20Education%20in%20Nunavut.%20Final%20Report%20of%20the%20External%20Review%20of%20Inclusive%20Education.pdf)
- ²⁶ Age of Majority Act (1988, c.A-2). Retrieved from <https://www.nunavutlegislation.ca/en/download/file/fid/10726>
- ²⁷ Government of Canada, Department of Justice (2018). Article 12 of the Convention on the Rights of the Child and Children’s Participatory Rights in Canada. <http://www.justice.gc.ca/eng/rp-pr/other-autre/article12/p3a.html>
- ²⁸ College of Physicians & Surgeons of Alberta (2015). Consent for Minor Patients. <http://cpsa.ca/wp-content/uploads/2015/08/Consent-for-Minor-Patients.pdf>
- ²⁹ Alberta College of Social Workers (2013). Standards of Practice. https://www.acsw.ab.ca/document/1327/final_standardsofpractice_20131104.pdf
- ³⁰ Government of Nunavut, Department of Health (13 March 2015). Clinical guideline: Unaccompanied and mature minor guidelines. Personal Communication.
- ³¹ Government of Nunavut, Department of Health (4 October 2017). Mature Minors PDF. Personal Communication.