

Achieving Inclusion

A Collection of Resources for Families on Inclusive Education



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Introduction to Family Resource Binder on Inclusive Education

This resource binder contains a number of important resource documents on topics and issues related to inclusive education in the kindergarten to grade 12 public education system. It is designed to assist families who have a child with a disability by providing easy access to Department of Education and Early Childhood Development policies, rules, standards and guidelines. These documents set out important information about how the education system operates, and includes information on the inclusion, support and treatment of students with disabilities. Documents from other sources are also included, including resources developed by **Inclusion NB**.

Documents in this binder will help you to address a number of potential issues that you may face when dealing with the education system. You will find information on:

- What inclusive education is, including expectations regarding the inclusion of students in regular classrooms and in extra-curricular activities;
- Human rights laws, including your child's right to receive "reasonable accommodations" while at school, and what types of accommodations may be available;
- Requirements for the accessibility of schools;
- Education planning for students with disabilities (SEP guidelines);
- What could happen if your child is mistreated by other students or by teachers or other staff;
- How to appeal decisions made about your child;
- Expectations for student conduct;
- Student discipline for misconduct and how students who have a disability are to be treated if they misbehave;
- School bus safety;
- What should happen if your child is given a "time out" while at school;
- Guidelines for providing medication to students while they are at school; and
- NBACL's expectations for an inclusive education system that supports and includes all children.

The documents are outlined in a Table of Contents. For easy access, documents are numbered and tabs are provided to assist you in finding what you may need.

We hope that you find this resource binder useful. If you require any assistance in understanding education policies, rules, guidelines or standards please contact **Inclusion NB**. We will help to explain these documents or provide you with the name and contact information of other people who can help.



Section 1

How to be an Effective Advocate for Your Child



Being an Effective Advocate for Your Child

Goals for this Section

- To learn about advocacy
- To learn how to be a more effective advocate for your child

What You will Find in this Section

- Information about:
 - Why advocacy is important
 - How service systems work
 - Tips for being an effective advocate
 - Tips for working with professionals
- Checklist for Preparing for Meetings
- ♦ Worksheet 1 Contact List of People Willing to Help Advocate for My Child
- Worksheet 2 Sample Log for Recording Discussions
- A List of Additional Resources

Our Journey So Far

- Families have led the charge for change and opportunities for people with disabilities.
- Families have come together and created organizations (such as the Association for Community Living) to combine their voices. This has led to significant change in the systems that people with disabilities encounter on a regular basis.
- People with disabilities have been supported to speak up for themselves.

Introduction

This section reviews some of the important aspects of advocacy for families who have a son or daughter with a disability. In essence, advocacy is the process of supporting and standing up for another person. Good advocacy on behalf of a child with a disability may be necessary for a number of reasons:

- Your child may have difficulty speaking for him or herself because of communication difficulties or other reasons.
- Your child may not be afforded the same opportunities in life because of other people's attitudes, or because of physical or other barriers that may exist.
- Your child may have greater needs for support in order to enjoy life or to be involved in school or other learning opportunities, employment in the community, or other community activities.

How much and what kind of advocacy may be required will depend on each individual's or family's own circumstances and needs. Regardless, advocacy can be more effective when families learn the skills and steps that can help you get results. This section provides valuable information that will assist families with the advocacy process.

Advocating for What?

Advocacy can be used for many purposes. Advocating for and with a loved one with a disability may:

- Help your child stand up for his or her individual rights (for example, the right to make decisions, the right to dream and set goals, the right to have meaningful relationships, the right to be safe, etc.).
- Help your child have and maintain opportunities for meaningful involvement in the community (including school and learning, employment and recreation).
- Help your child gain access to the supports and disability related services that he or she may require to have a good life.

A good starting point for effective advocacy is to know and be clear about what you and your child want and need. It may be harder to get good results when you are unclear about what you want to see happen in your child's life. There are a few important things that you, your child, and others can do:

- You can help your child develop and tell others about his or her vision or dreams for the future. At times, especially when your child is younger, you may need to talk about your vision for your child. It is this vision that should inform and drive your efforts to achieve good things for your child.
- You can help your child develop and set some short and long term goals. Goals may involve the areas of education and learning, employment, recreation and so on. Goals should be positive but also realistic and achievable.
- You can help to identify what actions or steps need to be taken to achieve your child's goals. Knowing what needs to happen is a critical part of effective advocacy. Remember that there may be other people that need to be involved in helping to figure out what actions need to take place.

Fortunately, there are planning processes that can help you and your child identify dreams, goals and actions. Many people with disabilities have benefited from planning processes such as PATH and MAPS. For more information on these planning processes, please read Chapter 5 or contact Inclusion NB.

A Note about Service Systems

Over the course of your child's life you will encounter a number of different service systems. There are many different types of service systems including early child care, education, medical and mental health, disability services, employment, and income support. Some services are provided by government while others may be provided by community agencies (which are usually funded by government). Each of these systems is unique but most have some common features, including:

- Its own set of rules and regulations that set out what services can be provided and by whom.
- Professionals and support staff who are hired to provide services that you and your child may need. (For more about working with professionals see the information at the end of this chapter).
- A "hierarchy". This means that there are levels of authority that can range from "front line" workers to supervisors, managers, directors and often other layers of people who are in control of the organization. Working with these kind of systems can be frustrating but it is important to know the "chain of command" if you are going to be an effective advocate.

- A budget or set amount of money that someone decides will be available to provide services and supports. How this money is used is important. Service systems are often challenged by the demand for services that exceeds the money that is available.
- Sometimes (or perhaps often) services systems are disconnected from one another and work independently (some call this working in "silos"). This can cause considerable frustration for families as they often have to try and work with a number of different systems at the same time. Governments are looking for ways to better "integrate" their service systems in order to make them more effective to those they serve.

Tips for Being an Effective Advocate

Becoming an effective advocate may require learning about good advocacy practices as well as having a lot of patience and perseverance. Some people are naturally better at advocacy than others. Those who tend to be better advocates are people who are not easily intimidated by difficult people or situations and who have little difficulty in speaking up for themselves or others. Some people, however, learn to be good advocates over time (often because they feel they have to be to achieve good things for their child).

There are a number of good practices that will help you to become an effective advocate. These practices can be broken down into four main areas: preparation, communication, documentation or note taking, and follow up. It is important to remember that what you may need to do as an advocate may depend greatly on the issue or situation. Some situations will be more difficult and trying. They may require action over a period of weeks, months, or sometimes years. Other situations may be resolved more easily and therefore require less effort. Below are a few tips that you can consider as you advocate on behalf of your child

Preparation

Good preparation is a very important aspect of effective advocacy. Here are a few tips to help you become more prepared:

• Remember that information is power.

The more more that you can inform yourself about a particular issue or situation the better you will be able to speak on behalf of your child. Depending on the situation, you may need to become better informed about your child's rights, how different service systems operate, how other families have achieved similar things for their child, and so on.

Have specific goals or things you would like to achieve for your child. Sometimes goals can be broadly stated (for example, to help my child find a job) but goals may also be much more specific. Good preparation usually involves trying to be as specific as possible about what you want to achieve and, if possible, what specific actions you would like to see happen.

- ◆ Identify the key issues or problems that you and your child are encountering. Often, people with disabilities face barriers that may result from other people's attitudes, a lack of effective supports and services, etc. When you are able to clearly identify the problems or barriers that may exist, you can focus your advocacy on what needs to be addressed.
- Identify some possible solutions that you see as workable. Sometimes, solutions may not be easily identified or can only be identified by talking things through with others.
- If possible, identify what you are willing to accept if you cannot get exactly what you want.

This will require thinking about what you may be willing to compromise with. This is not always easy but it is sometimes necessary. Having a "fall back" position will allow you to still negotiate for something that may be acceptable, even if it is not the perfect solution.

• Identify people who may be able to help you.

Often, advocacy is more effective if you have allies. This may be simply someone who agrees to attend a meeting with you to support your cause or to simply take notes. It may also be someone who has some particular expertise in the issue you are dealing with or in advocating for people with disabilities (for example, a volunteer or a staff person from a disability organization). Remember, being a good advocate does not mean that you have to do everything on your own.

Identify the people that you need to talk with to achieve results for your child. These may be people who have some authority to make some decisions or who can help make things happen. Depending on the circumstances, key people might include someone who works for government, a politician, someone from a service agency, an employer or a human resource manager in a company, and so on.

Communication

Effective advocacy also requires good communication. Communication can take many forms including phone calls, face to face meetings, group meetings, letters and emails. Here are a few tips to remember about communication:

• Be clear and concrete.

This means making sure that your messages or requests are stated as clearly and briefly as possible. If your message or request sounds confused, other people may not know what it is that you want for your child. What is the most important information that you need to convey? At times, other information may be useful to support your request. Too much information, however, may get you side-tracked on other issues that may not be as important.

• Be assertive.

When you communicate with others, they should understand that you have expectations that you expect to achieve. Assertive communication also means talking in a firm (but not harsh) tone of voice. In face to face meetings, try to keep your body erect but also relaxed and use eye contact. Remember that

assertive communication is not aggressive.

• Listen carefully to what other people are saying.

Listening is simply a respectful way to communicate. This means paying close attention to what people are trying to tell you and not interrupting when other people are talking. In addition, listening may also provide you with

information or clues about how to solve a problem or to get what you want for your child.

• Ask questions.

If something is not clear to you, ask for a better or clearer explanation. Asking questions is also a good way to get valuable information that may assist you in your advocacy. Asking questions may also be a useful way to have a conversation with someone who may be able A key part of effective advocacy is building good relationships with people who are in the position to make decisions or to offer help.

to help you. A key part of effective advocacy is building good relationships with people who are in the position to make decisions or to offer help. If possible, prepare the questions you want to ask before a conversation or meeting.

Where appropriate, use stories or visual ways to communication information. Often, people remember personal or other kinds of stories more than anything else. Stories can be helpful in providing a sense of the real life issues that may be at stake. They can also be helpful by providing examples of how situations or issues may be resolved.

Documentation and Note Keeping

Keeping good notes and records can be a great aid to the advocacy process. We like to call it the "power of the paper trail". Here are some tips that may be helpful:

• Keep a notebook, log or a diary to record your discussions.

Whether you have talked with someone on the telephone or in person, it is important to keep track of the name, contact information and title or position of the person with whom you spoke. Also, record the date and any responses you have received. This information will be particularly helpful to you if you need to do a follow up or talk with someone else who is higher in the "chain of command" within an organization, government or company.

• Keep a file of written responses and other documents.

Sometimes you will receive written responses to requests or will want to ask for a written response. This may be in the form of letters or emails. It is important to keep track of these in case you need them in the future. Sometimes, people will say or promise things verbally but not later act upon. Having a written record of what was agreed to may be very helpful. Also, when a request is being refused, it is helpful to have the refusal (preferably with the reasons for the refusal) spelled out in writing. This may be particularly important if you are asking someone else to review the decision or have the opportunity to make an appeal.

• Use e-mails as a follow up to meetings.

After meetings it may be useful to send an e-mail message to the people you met with to summarize what was agreed upon. If so, send your message as soon as possible after the meeting and print your message and any responses and keep them in your document file.

Follow Up

Often, advocacy does not provide immediate results. Some situations may require persistence and effort to achieve success or have things resolved. Often the adage "the squeaky wheel gets the grease" is very true when families are trying to accomplish things for their child with a disability. Keep the following points in mind:

• Try not to be too frustrated or intimidated if you are not getting the response or results that you are seeking.

Continue to follow up until you feel that your issues have been resolved to your and your child's satisfaction.

• Sometimes, following up your issues may require that you talk with a more senior person with the organization.

This person may have more authority to make decisions or may have an interest in helping you resolve your issue.

- At some point, you may feel that you have done all you can on your own. Following up your advocacy may require that you involve other people, particularly from a disability organization to assist you.
- When dealing with government systems or agencies, you may need to contact elected officials.

This kind of follow up should normally be done only when you have gone through all of the regular channels in the government system.

• Lastly, there may be times that you are not successful no matter how hard you try. Remember that advocacy is about negotiation. What are the things that you are willing to compromise with or settle for if you cannot get what you want or need? Sometimes, the next best solution is better then no solution at all.

Working with Professionals

From the time of the birth of your child, you may be involved with a number of professionals. These may be medical professionals, social workers, early intervention specialists, educators, and others. Your relationships with these professionals will be important. The best kind of professional–parent relationships are those where there is trust, respect and open communication. Parents are recognized for the central role they play in the life of a child with a disability and on that child's growth, development and well being. Professionals are recognized because they have some special knowledge to contribute.

It is sometimes easy to feel that professionals know best and that parents should not challenge what professionals are saying or suggesting. At the same time, however, it is important that parents' ideas and concerns are respected. There may be times when you and professionals will not agree on important issues concerning your child. In a good parent-professional relationship, these differences are often resolved by talking openly. Sometimes,

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however, parent-professional relationships break down, and you may need to find other people who can help you and your child.

The National Information Center for Children and Youth with Disabilities in the United States has provided a number of useful suggestions for parents on working with professionals:

- If you are looking for a professional with whom you can work well, ask other parents of children with disabilities.
- If you do not understand the words that a professional uses, be prepared to ask questions. For example, say "What do you mean by that?" or "I don't fully understand, can you please explain that again?"
- If necessary, write down what professionals are saying. This can be particularly helpful in medical situations when a medication or therapy is to be given.
- Learn as much as you can about your child's disability. This will help you to better understand what professionals are saying and to be better informed in discussions with professionals.
- Prepare for visits to professionals by writing down a list of questions or concerns you would like to discuss during the visit.

- Keep a notebook in which you write down information concerning your child's particular needs or your concerns. This can include notes about your child's medical history, results from tests that may have been given, observations you have made about your child, and so on. A loose-leaf binder is easy to maintain and add information to.
- If you do not agree with professional recommendations, say so. Be as specific as you can about why you do not agree.

Adapted from: Parenting a Child with Special Needs: A Guide to Reading and Resources. Available from www.kidsource.com



Checklist for Preparing for Meetings **Before the meeting**

- I have identified what I am asking for
- I have identified the "key players" that need to be involved
- I have a supporter to go with me to the meeting
- I have written down any points I wish to discuss or questions I would like to have answered
- I have the following information: the day, date, time frame, and place of the meeting, who will be in attendance, and whether I must bring any materials

The scheduled meeting time allows enough time to cover the issue(s) that need(s) to be addressed

I have gathered and prepared any materials that I think are necessary for the meeting

During the meeting

I arrive a few minutes before the meeting time

I record (or have your supporter record):

- the date and place of meeting
- who is in attendance with contact information, if possible
- key points of information, decisions made
- the date and details of any future meetings

I ask participants to clarify any terms or points I don't understand

After the meeting

I have asked for minutes to be sent out regarding the meeting with a summary of decisions that were made and issues that were addressed

OR

I have sent out an email to all participants summarizing what I understood to be the decisions made and issues that were addressed, with a request for their confirmation my summary

Worksheet 1

Contact List of People Willing to Help Advocate for My Child

Name:
Telephone #:
E-mail:
Name:
Telephone #:
E-mail:
Name:
Telephone #:
E-mail:
Name:
Telephone #:
E-mail:
Name:
Telephone #:
E-mail:

Worksheet 2

Sample Log for Recording Discussions

Date:
Names of people involved:
Contact information for people involved:
Questions asked / What was discussed?
Result of Discussion:
Follow-up steps required:

Additional Resources

Available from Inclusion NB (free to families)

Opportunity Link – Module 4 – Advocacy Skills for Families. Available on-line at www.inclusionnb.ca

Other Resources

Advocacy Handbook, Fredericton Association for Community Living (1997)

Assertiveness and Effective Parent Advocacy, Marie Sherrett. Available on-line at www.fetaweb.com/01/assert.sherrett.htm.

Introduction to Self Advocacy, Disability Rights California. Available on-line at www.disabilityrightsca.org/pubs/507001.pdf.

Strategies: A Practical Guide for Dealing with Professionals and Human Service Systems. Shields, Craig V. Ontario: Human Services Press (1987) (Book)

Ten Steps to Being an Effective Self Advocate, Advocacy Center for Persons with Disabilities. Available on-line at www.advocacycenter.org/documents/Ten_Steps_Brochure.pdf.

Websites

www.childrensdisabilities.info/advocacy/index.html. This site contains various articles on advocacy from a parent's perspective.

www.wrightslaw.com/info/advo.index.htm Articles on advocacy and education.









NBACL Documents



Inclusion NB

Position Statement on Inclusive Education

Purpose and Goal

To ensure that New Brunswick's education system and schools reflect and prepare students for life in inclusive communities where:

- everybody is treated with dignity and respect,
- difference is accepted, respected and celebrated,
- people are safe,
- people help each other,
- people are life-long learners,
- people are challenged to reach their full potential, and
- everyone enjoys the same freedom (with adequate and appropriate support if necessary) to choose their life's path and attain their goals.

Background

For many years, flawed science and public and professional prejudice led to the widespread belief that children with intellectual disabilities did not belong in schools and could not be taught anything worth learning. Parents of these children (and other people) knew from their own experience that their children could learn and they formed associations and raised money to provide an education for them. In 1957 the provincial government recognized the efforts of these pioneering parents by passing the *Auxiliary Classes Act*. This Act wrote into law the myth that children with intellectual disabilities could not be "educated" and so did not belong in school. It did, however, provide some funding to help associations provide "training and instruction" in special classes for some – not all -- children with intellectual disabilities (and cerebral palsy) up to age twenty-one. This was the first recognition that the government had some responsibility for some of these children, and it was considered a major breakthrough at the time.

Over the next twenty-five years Auxiliary Classes were established in many parts of the province. With few exceptions they were operated by local branches of CAMR-NB – which was what Inclusion NB was then called. But there was growing discontent. Some parents were unhappy with the non-academic "life skills" curriculum in the Auxiliary Classes and felt that their children should be allowed to go to the schools that they supported with their taxes along with their other children. Some parents felt that if their children were segregated from other children until age twenty-one they would probably be segregated and isolated for the rest of their lives. On the other hand, some parents felt their children were "safer" in the Auxiliary Classes than they would be in a real school.

Around 1980 Inclusion NB began to call for an end to Auxiliary Classes and for children with intellectual disabilities to be "integrated" into regular classes in regular schools. One or two school boards began to take steps towards this goal, taking over the Auxiliary

Classes and putting the students in regular schools – and even sometimes in regular classes. The government commissioned a report which recommended that there be free public school privileges for all children and a process for "integrating" children with intellectual disabilities into the regular school system. The government established a broadly-based *Ministerial Advisory Committee under the Auxiliary Classes Act* (with representation from Inclusion NB) to provide advice on how this should be done.

In 1982, then-premier Hatfield made a speech to the 25th anniversary meeting of Inclusion NB in which he recognized that the *Auxiliary Classes Act* would be unconstitutional when the equality rights section of the *Canadian Charter of Rights and Freedoms* came into force in 1985. When 1985 came and went without government action to change the *Schools Act*, one group of parents started legal action against the government under the new *Charter*.

In 1986, the government introduced "Bill 85" to change the *Schools Act.* "Bill 85" received unanimous support from all three parties then represented in the New Brunswick Legislature. In its final form, it was remarkably progressive and put New Brunswick ahead of any other province in Canada, and among leaders in the world. The wording of it has since been copied by two European countries.

The new legislation opened school doors to students with intellectual disabilities, but also to students with a variety of other disabilities who had been kept out previously. The Auxiliary Class teachers who wanted to be were "integrated" into the regular school system but otherwise the school system was unprepared to "integrate" these new and "different" students. The regular teachers had little experience with students who were "different" and their training had not given them the professional tools with which to do the job they now had to do. Prior to and after the passage of Bill 85 there was a government commitment to training on inclusive practices. Unfortunately, this commitment faded in the early 1990s (although this commitment has recently been renewed).

The Université de Moncton set out to try to develop a teacher-training program which would prepare teachers for the new realities they would find in their New Brunswick classrooms. The Anglophone universities were less supportive of the change in public education policy (to this day their teacher-training programs do not adequately prepare teachers to teach in New Brunswick classrooms). Many teachers and administrators, relying on common sense and basic good teaching practice, did a wonderful job of "integrating" the new students into the schools and into regular classes. They learned that the presence of these new students made them adapt in ways that made them better teachers. Some balked and would not accept that certain students belonged in regular classes in regular schools. While many students with intellectual disabilities flourished in the new environment, others in certain school districts and schools found themselves surrounded by negativity and resistance.

In 1987, after a change of government, there was a review of "integration", carried out by a legislative committee. This committee held hearings all over the province and received more submissions than any legislative committee had ever received to that time. The response, except from the teachers, was overwhelmingly positive, so "integration" continued to be government policy. After a few years it became clear that "integration" -- making a place in an existing system for students who had previously been excluded – was not enough. "Integration" tended to retain the notion that there were two kinds of students: "regular" students, and those who were "integrated". Schools thinking "integration" also tended to retain many of the old ways of doing things, and many of these did not work well with the more diverse student body. Schools needed to rethink their approach to education with the understanding that:

- All students have equal value;
- All students "belong" and should be made to feel they "belong" in all curricular activities and those extra-curricular activities the student may choose to participate in; and
- Good teaching practice respects each student, not as a member of a group that is defined by someone else, but as an individual.

For quality inclusive public education this requires at all levels:

- Treating each student with dignity and respect;
- Taking account of each student's learning style;
- Having high but realistic expectations for each student, based on the student's strengths and weaknesses, and
- Developing appropriate learning goals, related to those expectations that the student finds useful and interesting.

It also means that each student experiences a positive and supportive learning environment at all times and a safe, friendly and supportive school environment outside of the classroom (or other learning environment).

This is the essence of "inclusion"; more a value system than a list of requirements. A school district, a school, a principal, a teacher, a non-teaching professional, a non-professional staff member, who has these values and puts them into practice all the times is "inclusive". "Inclusion" and "inclusive education" are not about students with intellectual disabilities but about quality education and learning for each and every student.

Research and practice in New Brunswick and elsewhere shows that inclusive education benefits ALL students. The positive climate of "belonging" and respect that it generates reduces bullying and other negative aspects of school life, and enables quicker and more effective remedial action when they do occur. Inclusive education must be a central focus of the whole public education system, not an add-on to "business-as-usual".

In 2005, the government commissioned a major review of inclusive education that culminated in a report prepared by A. Wayne MacKay, a nationally known expert on education and a professor at Dalhousie Law School. This report contained several recommendations for improving inclusive education in New Brunswick. Significantly, this review re-affirmed the value of inclusive education and its relevance to all students

throughout the public school system. This was also acknowledged by the government of New Brunswick in its 2007 Education Plan, *When Kids Come First*. This plan noted that inclusive education is a "core value" of our education systems and committed to taking sustained action to ensure that our education system is fully inclusive.

Position Statements

Legislation, Policy and Funding

1. The New Brunswick *Education Act* contains a strong presumption that in an inclusive education systems ALL students attend and are welcomed into their neighbourhood schools in age appropriate regular classes and are supported to learn, contribute to and participate in all aspects of the life of the school as well as challenged to meet their intellectual, social, physical and career development goals.

2. New Brunswick must support the implementation of inclusive education throughout its public education system through clear and appropriate legislation, policies, and comprehensive "best practice" guidelines which are frequently up-dated as inclusive education practices evolve. This means taking full note of the New Brunswick Human Rights Commission's *Guideline on Accommodating Students with a Disability* (2007).

3. The New Brunswick public education system must be operated and administered at all times in a manner consistent with current best practices for inclusive education.

4. Educational administrators at all levels (i.e., from the deputy ministers through school district staff to principals and vice-principals) must understand and be committed to the philosophy, theory, principles and practice of inclusive education. Educational administrators must not normally be appointed unless they have this understanding and commitment. Where educational administrators are appointed without this understanding and commitment, they must receive adequate training so that they gain them.

5. Parents (and guardians) must be treated with dignity and respect and as a valuable source of knowledge of their child. Sincere and repeated efforts must be made to involve parents (and guardians) as supportive partners in the education (in the broad sense) of their child in the New Brunswick public education system.

6. New Brunswick must ensure that funding for inclusive education is adequate and appropriate and that it is distributed in ways that promote inclusive education efficiently and effectively.

Classroom and Teaching Practices

7. In inclusive schools, diversity is recognized and celebrated. Classrooms are designed to reflect this diversity through the heterogeneous grouping of the student population. Students are not streamed or grouped on the basis of their ability or other personal characteristics.

8. Inclusive schools follow closely the principles and practices of Universal Design for

Learning (UDL). This means that curriculum, teaching practices and strategies, and student assessment are designed from the outset to ensure that all students can learn and actively participate in regular education programming.

9. Teachers remain responsible for the learning and education of the students assigned to them. Para-professionals or other people who may operate in the learning environment work under the guidance and direction of the teachers and are responsible to the teachers.

10. If a student finds that a particular learning environment contains factors that hinder her or his learning (e.g., lighting, noise), either the whole group moves to an environment which does not hinder the student's learning, or the first learning environment is adapted so that it no longer hinders the student's learning; the student is not moved elsewhere out of the group on his or her own.

11. No learning environment should be experienced as a prison by any student. A small number of students will find it difficult or impossible to stay or participate for an extended period in a learning environment in which there are other students. Their ability as adults to live as full citizens in their chosen community depends on the eventual success of consistent and concerted efforts to gradually enable these students to participate fully in learning environments and extra-curricular activities with other students.

12. Individual students can leave the regular classroom or other regular learning environment from time to time for specific reasons, such as receiving one-on-one assistance in a particular subject area. Some students may also need to be outside of the regular classroom for longer periods. If a student is withdrawn from the regular learning environment, the education system must provide the student with an individualized program of learning that will aim to achieve identified learning outcomes. In addition, the reasons for any withdrawal must be recorded and planning started to return the student to the learning environment as soon as possible.

13. Segregated classes that group students on the basis of personal characteristics (such as disability) are radically inconsistent with inclusive education and inclusive schools and cannot prepare the students in them or the students not in them for life in the kind of inclusive community most New Brunswickers want to live in. Segregated classes have no place in the New Brunswick public education system.

14. Segregating individual students within a regular classroom is radically inconsistent with inclusive education, inclusive schools and inclusive communities and has no place in the New Brunswick public education system.

Teacher Education and Professional Development

15. New Brunswick students at New Brunswick universities have a right to assume that on successful completion of their teacher training program they will be adequately and appropriately trained to teach in the New Brunswick public education system.

16. New Brunswick must ensure that new teachers are only licenced to teach in the

New Brunswick public education system when they have been adequately and appropriately trained to teach inclusively.

17. An adequate, appropriate and effective system of mentoring must be in place for all new teachers joining the New Brunswick public education system.

18. All teachers in the New Brunswick public education system must receive regular and up-to-date in-service training in relevant aspects of inclusive education, in the supportive environment of a community of learners.

19. All teachers in the New Brunswick public education system must have available to them adequate and immediate support to enable them to solve the challenges that are an inherent part of inclusive education.

Positive Learning Environments/Discipline Policies

20. Students have a right to be supported to learn and be treated with dignity and respect in a positive and safe learning environment. There must be adequate, appropriate and effective structures to protect students when this right is infringed.

21. It is morally, educationally and legally wrong to discipline or punish a student for actions over which the student has limited or no control.

22. Staff throughout the New Brunswick public education system have a right to a safe workplace and to be treated with dignity and respect. There must be structures to protect staff when this right is infringed. These structures must provide that before action can be taken against a student, there is first an investigation to find out whether the staff had provided a positive and safe learning environment for the student and treated the student with dignity and respect.

Transportation Practices

23. All students have the right to receive transportation services in a manner that will ensure that they are able to attend school for a complete school day.

Monitoring and Accountability

24. New Brunswick must establish adequate and effective methods of monitoring and evaluating the progress of schools and all other parts of the New Brunswick public education system towards inclusive education, and making education administrations at all levels – government, school district, school – accountable for continuous improvement in the implementation of inclusive education.

25. There must be adequate, appropriate, efficient and effective ways to monitor and evaluate the effectiveness of all educational administrators, within the framework of an inclusive public education system.

UN Convention on the Rights of Persons with Disabilities

An Overview

March 2010



On March 30, 2007 a landmark Convention was signed for the first time at the United Nations. At that time 82 counties, including Canada, signed a new Convention on the Rights of Persons with Disabilities. This was the highest number of signatories for the first day of signing to a UN Convention in the history of the United Nations.

Canada was very active in the development of the Convention from 2002 to 2006. Our participation involved representation from non-government organizations, including disability organizations such as the Inclusion Canada.

The main objective of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and freedoms by all people with disabilities.

What is a Convention?

A Convention is a legal agreement between countries that they will follow the same law about a specific issue. When a country signs and ratifies a Convention, it makes a legal promise to make its laws, policies and actions consistent with the Convention. By ratifying a Convention, countries often take steps to support the goals of the Convention.

Why the Convention is Important

Throughout the world people with disabilities face discrimination, are denied basic rights, and are denied access to education, employment, equal justice, opportunities to live where they choose, and many other rights and free-doms that many people take for granted. The Convention represents the most progressive human rights document for people with disabilities in the history of the world. It marks a significant shift in attitudes and approaches to persons with disabilities. The Convention views persons with disabilities as people with rights, who are capable of claiming those rights and making decisions for themselves as well as being active members of society.

Guiding Principles of the Convention

The Convention contains a number of important principles or beliefs that set the tone for the agreement and support the overall goal of having an international law on the rights of people who have a disability. The principles of the Convention are:

- Respect for everyone's inherent dignity, freedom to make their own choices and independence.
- Non-discrimination (treating everyone fairly).
- Full participation and inclusion in society (being included in the community).
- Respect for differences and accepting people with disabilities as part of human diversity.
- Equal opportunity.
- Accessibility (having access to transportation, places and information, and not being refused access on the basis of disability).
- Equality between men and women and boys and girls.
- Respect for the evolving capacity of children with disabilities and their right to preserve their identity.

Some Important Sections of the Convention

The Convention contains 50 sections (called Articles) that spell out the various rights of people with disabilities and the obligations of countries to respect and promote those rights. Here is a summary of a few of those sections:

Article 6: Women with disabilities. Countries acknowledge that women and girls with disabilities face discrimination and agree to protect their human rights and freedoms.

Article 7: Children with disabilities. Countries agree to take action to ensure that children with disabilities are able to enjoy human rights and freedoms equally with other children. Countries also agree that children should be given the opportunity to express their views on all things that affect them.

Article 8: Awareness raising: Countries agree that they should educate the public about the rights and dignity of persons with disabilities, as well as their achievements and skills. They also agree to combat stereotypes, prejudice and activities that might cause harm to people with disabilities.

Article 9: *Accessibility*: Countries support the goal of making it possible for people with disabilities to live independently and to participate in their communities. This means that any place that is open to the public must be accessible by persons with disabilities. It also means that people should have access to guides, readers, or sign language interpreters while in public places.

Article 12: *Equal recognition before the law.* People with disabilities have the right to enjoy "legal capacity" on an equal basis as others in all aspects of life. This includes having the right to make one's own decisions. Countries agree that they must take measures to provide people with disabilities access to the support they may require to exercise their legal capacity.

Article 13: *Access to justice.* Countries agree that they will provide effective access to justice for people with disabilities. This will include providing appropriate accommodations so that people can effectively participate in legal proceedings. It will also include training for people who work in the justice field including police and prison staff.

Article 19: Living independently and being included in the community. People with disabilities have an equal right to live in the community and countries agree to take action to facilitate full inclusion and participation in the community. This means that people with disabilities have the right to choose where and with whom they will live. It also means that people have access to disability related supports and services to support their inclusion in the community (and to prevent isolation and segregation from the community).

Article 24: *Education*. Countries recognize that people with disabilities have a right to an education. In order to realize this right without discrimination, countries agree to ensure the availability of an inclusive education system at all levels, as well as access to life-long learning. This means ensuring access to the general education system and the provision of supports and accommodations within the general education system.

Article 27: Work and Employment. Countries recognize that people with disabilities have a right to work on an equal basis with others. This includes having access to work environments that are open, inclusive and accessible. It also means having the assistance that may be required to find and maintain employment in both the public and private sectors.

Article 28: Adequate standard of living and social protection. People with disabilities have the right to an adequate standard of living and to social protection. Countries agree to take measures to ensure access to services and supports for disability related needs, public housing programs, and to poverty reduction programs.

Signing and Ratifying the Convention

As of March, 2010 144 countries have signed the convention and 82 have ratified. Under the terms of the Convention it came into force as an international agreement after 20 countries had ratified the agreement. This occurred on May 3, 2008.

Canada ratified the Convention on March 11, 2010. This ratification involved the support of all provincial and territorial governments and the Parliament of Canada.

What Does the Convention Mean for New Brunswick?

The province of New Brunswick is already doing many things that are consistent with the Convention. For example, our long term commitment to inclusive education and the recent development of a new Disability Support Program for adults with disabilities highlight progress in recognizing the rights of people with disabilities to be included in our society.

There are other areas in which we need to make improvements. For example, access to employment for many people with disabilities is still limited. Likewise, changes in the area of supported decision making are also needed. It is anticipated that it will take some time to fully implement the changes that may be required to make our laws, policies, programs and practices consistent with the Convention.

For More Information

The United Nations has a web site that features information and updates on the Convention on the Rights of Persons with Disabilities. This web site can be found at <u>www.un.org/disabilities</u>.





Section 3

Department of Education Documents




♠ GNB Contacts Français Departments Services

Education and Early Childhood Development Kindergarten to Grade 12

Anglophone School District Information



Anglophone North

Superintendent: Mark Donovan

Address: 78 Henderson Street Miramichi E1N 2R7

Telephone: (506) 778-6075

Website: asd-n.nbed.nb.ca



Anglophone North : Campbellton, Bathurst, Miramichi and Rexton regions (7 sub-districts)

Anglophone South

Superintendent: Zoë Watson

Address: 490 Woodward Avenue Saint John, E2K 5N3

Telephone: (506) 658-5300

Website: asd-s.nbed.nb.ca

Anglophone East

Superintendent: Gregg Ingersoll

Address: 1077 St. George Blvd., Suite 200, Moncton, NB E1E 4C9

Telephone: (506) 856-3222

Website: asd-e.nbed.nb.ca



Anglophone South : Sussex, Saint John and St. Stephen regions (12 subdistricts)



Anglophone East : Dieppe and Moncton regions (9 sub-districts)

Anglophone West

Acting Superintendent: Catherine Blaney

Address: 1135 Prospect Street Fredericton

Telephone: (506) 453-5454

Website: asd-w.nbed.nb.ca



Anglophone West : Fredericton, Oromocto, Woodstock and Edmundston Regions (13 sub-districts)

Related Links

School Directory

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GNB Contacts Français Departments Services

Education and Early Childhood Development Kindergarten to Grade 12

Francophone School District Information



District scolaire francophone Nord-Est

Superintendent: Pierre Lavoie

Address: 3376, rue Principale Tracadie-Sheila E1X 1A4

Telephone: (506) 394-3400

Website: francophonenordest.nbed.nb.ca



District scolaire francophone Nord-Est (pdf): Campbellton, Bathurst, Miramichi and Rexton regions (seven sub-districts);

District scolaire francophone Nord-Ouest

Superintendent: Luc Caron

Address: 298, rue Martin Edmundston E3V 5E5

Telephone: (506) 737-4567

Website: dsfno.ca



District scolaire francophone Nord-Ouest (pdf): Grand Falls, Edmundston, Saint-Quentin and Kedgwick regions (eight sub-districts).

District scolaire francophone Sud

Superintendent: Monique Boudreau

Address: 425, rue Champlain Dieppe E1A 1P2

Telephone: (506) 856-3333

Website: francophonesud.nbed.nb.ca



District scolaire francophone Sud (pdf): Miramichi, Rogersville, Saint-Louisde-Kent, Dieppe, Moncton, Fredericton, Oromocto, Woodstock, Saint John and St. Stephen regions (10 sub-districts);

Related Links

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Part A: Publications





Inclusive Education

I. Vision

An evolving and systemic model of inclusive education where all children reach their full learning potential and decisions are based on the individual needs of the student and founded on evidence.

II. Definition

Inclusive education is a pairing of philosophy and pedagogical practices that allow each student to feel respected, confident and safe so he or she can learn and develop to his or her full potential. It is based on a system of values and beliefs centered on the best interests of the student, which promotes social cohesion, belonging, active participation in learning, a complete school experience, and positive interactions with peers and others in the school community. These values and beliefs will be shared by schools and communities. Inclusive education is put into practice within school communities that value diversity and nurture the well-being and quality of learning of each of their members. Inclusive education is carried out through a range of public and community programs and services available to all students. Inclusive education is the foundation for ensuring an inclusive New Brunswick society.

III. Overarching Principles

The provision of inclusive public education is based on three complementary principles:

 public education is universal - the provincial curriculum is provided equitably to all students and this is done in an inclusive, common learning environment shared among age-appropriate, neighbourhood peers;

- (2) public education is individualized the success of each student depends on the degree to which education is based on the student's best interests and responds to his or her strengths and needs; and
- (3) public education is flexible and responsive to change.

Curriculum and

Assessments

Recognizing that every student can learn, the personnel of the New Brunswick public education system will provide a quality inclusive education to each student ensuring that:

- Student-centered 1. all actions pertaining to a student are guided by the best interest of the student as determined through competent examination of the available evidence;
 - 2. all students are respected as individuals. Their strengths, abilities and diverse learning needs are recognized as their foundation for learning and their learning challenges are identified, understood and accommodated;
 - 3. all students have the right to learn in a positive learning environment;
 - 4. the common learning environment, including curriculum and instruction, is structured and adapted such that all students learn to their best potential;
 - 5. assessment of student learning is diverse, authentic, appropriate, relevant, and sufficiently frequent to inform precision teaching;
- Educators and
 skills, attitudes and knowledge required for the successful learning of all students are fostered in all personnel who work with students through ongoing professional development and adherence to professional standards;
- Services and
Community7. all students are provided with a range of programs, services and
resources, including transition planning, that meet their individual goals
and needs, and contribute to their cognitive, social, psychological, and
cultural development;
 - 8. partnerships with parents and community groups which capitalize on the expertise and resources of these groups are cultivated;

Government-wide9. systematic measures aimed at prevention, and early, timely assessmentSupportsof need and evidence-based intervention are in place; and

10. government departments collaborate to offer responsive and integrated services of professionals and paraprofessionals beginning pre-school.

IV. Equity

The principle of universal design is the starting point for an inclusive public education system whereby the learning needs of the greatest number of students are met by maximizing the usability of programs, services, practices, and learning environments. When this measure alone is insufficient to meet the needs of an individual student or groups of students, accommodations are required. This is both an ethical and a legal requirement. However, it is a requirement that is always exercised within a concrete context.

The New Brunswick public education system will ensure:

- 1. compliance with the *Canadian Charter of Rights and Freedoms* and *The New Brunswick Human Rights Act*, which require reasonable accommodation of students' special needs unless they demonstrably give rise to undue hardship due to cost, risk to safety, or impact on others, particularly on other students.
- resolution in a timely manner when the needs of students conflict such that the opportunity for some or all students to meet their learning outcomes is jeopardized, or their safety is at risk. If necessary, provision will be made for mediation, advocacy, and/or the provision of external expertise to find solutions which respect the best interests of all students involved.

IV. Accommodation

Accommodation means changing learning conditions to meet student needs rather than requiring students to fit system needs. Based on analysis, student needs may be met through individual accommodation or, in some cases, through universal responses that meet the individual student's needs as well as those of other students.

Every student has the right to expect that:

- 1. accommodations will be considered and implemented as appropriate in a timely manner, when evidence demonstrates that the status quo is not in the best interest of the student;
- 2. he or she will participate fully in the common learning environment, meaning an environment that is designed for all students, is typical for the student's age and grade, and is shared with his/her neighbourhood peers; and
- 3. his or her learning outcomes, instruction, assessment, interventions, accommodations, modifications, supports, adaptations, additional resources and learning environment will be designed to respect his or her learning style, needs and strengths.

The following must be respected:

- a. the ultimate purpose of schools as places for academic learning and the development of social capital must be maintained;
- b. clear and precise learning outcomes are established by the school in ongoing consultation with parents. When it is determined that students require learning outcomes other than those prescribed by the provincial curriculum, parental consultation must be on an individual basis;
- c. there is a justifiable, rational connection between the program of learning, the established learning outcomes and the assessment of learning;
- d. the student's success in achieving each learning outcome is well-documented;
- e. clear measures are in place to ensure all students are included in the social and extracurricular life of the school and exposed to a wide range of activities and people;
- f. curricular and other learning must take place in the most inclusive environment in which the learning outcomes can be achieved, meaning that:

- i. before a learning environment outside of the common learning environment can be considered, it must be clearly demonstrated that the learning outcomes could not be met in a more inclusive environment despite all reasonable efforts to provide support and accommodation, and monitored on an ongoing basis and participation in the common learning environment is reestablished when it meets the needs of the student and the other students; or
- ii. temporary situations have been created outside of the common learning environment to better assist the student to meet his or her learning outcomes within the common learning environment, and
- while, type of disability and medical diagnosis provide important information, learning environments are never developed or assigned on the basis of disability or label.

V. Accountability

- Inclusive school practices are synonymous with successful school practices, therefore indicators and targets for school success, including indicators for inclusive practices, must be clearly defined and evaluated provincially, by school districts and by schools, and areas for improvement identified and addressed.
- 2. Indicators of student learning and development must be created, evaluated, and publicly reported to ensure:
 - a. New Brunswick students are achieving on par with other Canadian students;
 - students in all school districts and schools have an equal opportunity to succeed; and
 - c. students whose characteristics are associated with vulnerable groups or who require enrichment have an equal opportunity to succeed.



Obey the driver promptly. 1.

- 2. Avoid any unnecessary conversation with the driver while the bus is in motion.
- **Respect the driver and fellow passengers.** 3.



- 4. Arrive on time and stand away from the roadway while waiting for the school bus.
- 5. Wait until the bus comes to a complete stop before moving to get on.

School Bus

- 6. When crossing the road, wait for the driver's signal and always cross at least 3 metres in front of the bus. NEVER CROSS BEHIND THE BUS.
- 7. Always keep a safe distance around the school bus.
- 8. Go directly to your seat; allow others to sit with you. **Remain seated.**
- Sit facing forward, with your belongings on your lap or under the seat. Keep the 9. aisle clear.
- 10. Obtain approval of the driver to open windows or emergency door. Nothing must hang out or be thrown out of the windows of the bus.
- 11. **Talk quietly.** Silence is required when approaching a railway crossing.
- 12. Eating and drinking are not allowed on the bus. Use of tobacco is forbidden.
- 13. Neither pets nor large objects are allowed on the bus.
- 14. Anyone who intentionally damages the bus will be held responsible.
- 15. Dress according to weather conditions. For safety reasons, avoid drawstrings or loose objects on clothing and backpacks.

Pupil Transportation is a privilege - follow the rules Violation may result in disciplinary action and possible loss of transportation





Section 3

Part B: Policies





Policy 322

Page 1 of 14

Subject: Inclusive Education Effective: September 17, 2013 *Revised:*

1.0 PURPOSE

This policy establishes the requirements to ensure New Brunswick public schools are inclusive.

2.0 APPLICATION

This policy applies to all schools and school districts within the public education system in New Brunswick.

3.0 DEFINITIONS

Accommodation: measures that allow an individual experiencing an obstacle to learning to gain access to and achieve success in regular classroom learning activities. This may involve removing barriers, ensuring accessibility, using adjustments to instructional strategies, providing one-on-one assistance or allowing some extra time to complete a task. These, and similar strategies, help each student to reach their potential, both academically and socially.

Age-appropriate peers: students who are approximately the same chronological age.

Alternative education program: a program for high school students (Grades 9 to 12) who require a learning opportunity in an environment that is separate from the educational program provided in the neighbourhood high school. These programs are typically compensatory or supplementary, and operationally are in distinct physical locations. Alternative education programs may be the means for a student to complete public education or it may be transitory, with the student returning to the neighbourhood high school.

Barrier to learning: a circumstance in which the instruction provided within the common learning environment does not effectively meet the needs of the student as a learner. For example, these needs could be physical, sensorial, cognitive, socio-emotional, organizational or logistical.

Classroom teacher: a certified teacher employed in a New Brunswick school district who is assigned to provide instruction to a group of students in one or more subjects during the school day.

Community agency: an organization that provides direct or consultative services to students and their families.

ORIGINAL SIGNED BY



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Community-based learning opportunity: additional learning opportunities within a community setting that enable students to meet prescribed learning outcomes through experiences that supplement classroom/school-based instruction.

Common learning environment: an inclusive environment where instruction is designed to be delivered to students of mixed ability and of the same age in their neighbourhood school, while being responsive to their individual needs as a learner, and used for the majority of the students' regular instruction hours.

District Education Support Services (District ESS) Team: the district level professionals, under the supervision of the Director of Education Support Services, who provide support to schools, teachers and school-based education support services (school-based ESS) teams in meeting the needs of students.

Educational assistant: paraprofessionals working in the public education system to support teachers in meeting the instructional and personal needs of students.

Education support teacher: a certified teacher working in the public education system to support classroom teachers in developing, implementing and evaluating instructional strategies to ensure student success in learning, as well as providing direct instruction to individuals or small groups of students where appropriate.

Francization: In Francophone schools, francization is a process allowing students speaking little or no French to develop their linguistic abilities, orally and in writing, in order for them to fully participate in their Francophone school, and contribute to the vitality of the Acadian and Francophone culture and community.

Grade retention: a process of having a student repeat a full year of instruction based on an evaluation and an individual student's progress.

Inclusive education: the pairing of philosophy and pedagogical practices that allows each student to feel respected, confident and safe so he or she can participate with peers in the common learning environment and learn and develop to his or her full potential. It is based on a system of values and beliefs centered on the best interest of the student, which promotes social cohesion, belonging, active participation in learning, a complete school experience, and positive interactions with peers and others in the school community.

These values and beliefs will be shared by schools and communities. Inclusive education is put into practice within school communities that value diversity and nurture the well-being and quality of learning of each of their members. Inclusive education is carried out through a range of public and community programs and services available to all students. Inclusive education is the foundation for ensuring an inclusive New Brunswick society.

Neighbourhood school: a local school that each student would normally be assigned to in his or her community, based on the school's catchment area.



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Parent: includes guardian, as per the Education Act.

Personalized learning environment: any situation consisting of a variation of the common learning environment of a student where the student receives individualized instruction in the neighbourhood school but not in the common learning environment.

Personalized learning plan (PLP): a plan for a student who requires specific and individual identification of practical strategies, goals, outcomes, targets and educational supports that ensure the student experiences success in learning that is meaningful and appropriate, considering the student's individual needs.

School-based Education Support Services (school-based ESS) Team: a team led by the school principal that assists classroom teachers to develop and implement instructional and/or management strategies and to coordinate support resources for students with diverse needs. In addition to school administrators, the team is made up of Education Support teachers and other staff members whose primary role is to strengthen the school's capacity to ensure student learning. The membership of the school-based ESS team will be determined by the size, level and local context of the school.

School personnel: as per the *Education Act*, school personnel means a) superintendents, Senior Education Officers and other administrative and supervisory personnel, b) school bus drivers, c) building maintenance personnel, including custodians, d) secretaries and clerks, e) teachers, f) persons other than teachers engaged to assist in the delivery of programs and services to students, g) and other persons engaged in support areas such as social services, health services, psychology and guidance.

Segregated program/class: a learning environment based on one or more specific diagnoses/labels of disability or exceptionality, and typically used for a long term. Examples include life skills classes, segregated resource rooms and behaviour classes.

Student: includes pupil, as per the Education Act.

Student-centered learning: an approach to education that is focused on each student's needs, abilities, interests and learning styles.

Universal Design for Learning (UDL): a set of principles for classroom instruction and curriculum development that give all students equal opportunities to learn. UDL provides strategies for creating instructional goals, methods, materials, and assessments that work for everyone. This flexible approach to learning can be customized and adjusted for individual students.

Variation of the common learning environment: a situation where a student is removed from the common learning environment for more than one period daily or more than 25% of the regular instructional time, whichever is greater.



POLICY 322

4.0 LEGAL AUTHORITY

Education Act

6 (b.2) "The Minister may establish provincial policies and guidelines related to public education within the scope of this Act ..."

5.0 GOALS / PRINCIPLES

- 5.1 Inclusive public education:
 - Recognizes that every student can learn.
 - Is universal the provincial curriculum is provided equitably to all students and this is done in an inclusive, common learning environment shared among age-appropriate peers in their neighbourhood school.
 - Is individualized the educational program achieves success by focusing on the student's strengths and needs, and is based on the individual's best interest.
 - Is requiring school personnel to be flexible and responsive to change.
 - Is respectful of student and staff diversity in regards to their race, colour, religion, national origin, ancestry, place of origin, age, disability, marital status, real or perceived sexual orientation and/or gender identity, sex, social condition or political belief or activity.
 - Is delivered in an accessible physical environment where all students and school personnel feel welcome, safe and valued.
- 5.2 A key element of sustaining an inclusive education system consists of the removal of barriers to learning as well as ensuring access to learning opportunities for relevant school personnel. The Department of Education and Early Childhood Development (EECD) and districts must establish and maintain a professional learning program to ensure that educational staff have the knowledge and skills needed to provide effective instruction to a diverse student population.
- 5.3 Inclusive education practices are not only necessary for all students to develop and prosper, but also critical to building a society that is inclusive of all people and their basic legal, civil and human rights.

6.0 REQUIREMENTS / STANDARDS

6.1 Common Learning Environment

It is the responsibility of all school personnel to ensure that the common learning environment:



POLICY 322

- 6.1.1 Is enabling each student to participate fully in a common environment that is designed for all students. It is appropriate for the student's age and grade, is shared with peers in their neighbourhood school, and respects learning styles, needs and strengths.
- 6.1.2 Is a common environment where student-centered learning principles are applied (e.g., Universal Design for Learning, learning outcomes, instruction, assessment, interventions, supports, accommodations, adaptations and resources).
- 6.1.3 Is giving consideration to accommodations and implements them in a timely manner.

6.2 Supports for Inclusion

EECD, as well as school districts, must establish and maintain systemic supports for public education that make inclusion of all students a practical reality. These supports include personnel, as well as policy, funding and capacity-building strategies. They need to be systemic and ongoing.

To achieve this outcome, the following expectations for school personnel are defined:

- 6.2.1 In providing leadership for inclusive schools, principals must:
 - Allocate available resources to maximize assistance to classroom teachers to enable them to support the learning of all their students. This includes professional learning opportunities, support from Education Support Services (ESS) team members, as well as any other school personnel as appropriate.
 - Ensure that school-wide academic and behaviour interventions are based on data analysis and evidence-based practices, and used systemically to respond to varied student needs.
 - 3) Ensure that a student's instruction is primarily provided by the classroom/subject teacher.
 - 4) Ensure homogenous groupings of students with similar needs are flexible and temporary, and their utilization is based on on-going assessment of student needs and successes. The use of homogenous groups requires targets, clearly identified short-term goals, and pre-identified strategies with defined, on-going assessment methodologies to monitor success.
 - 5) Ensure the assignment of educational assistants to support classroom teachers is done in an effort to achieve a balance between the needs of students in a classroom and the needs of a teacher for support.
 - 6) Ensure educational assistants and teachers are aware of and respect the guidelines and standards of practice for educational assistants.



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- 7) Ensure the goals of the School Improvement Plan and of the school's Professional Learning Plan are aligned to support inclusive practices.
- 8) Support professionals and paraprofessionals in the use of flexible instructional strategies including Universal Design for Learning, differentiation and multi-level strategies to support student learning.
- 9) Ensure that all students have access to co-curricular and school-sponsored activities, including access to transportation in school vehicles.
- 10) Ensure that community-based learning opportunities meet the personal growth goals identified for individual students, and for those students who have a Personalized Learning Plan, that the community-based learning objectives are consistent with the PLP.
- 11) Monitor and communicate to the Office of the Superintendent the current and future needs regarding the provision of accessible physical environments, in order that inclusive practices are supported.
- 6.2.2 The following practices must <u>not</u> occur:
 - Segregated, self-contained programs or classes for students with learning or behavioural challenges, either in school or in community-based learning opportunities.
 - 2) Alternative education programs for students enrolled in kindergarten to grade eight.

6.3 Personalized Learning Plan (PLP)

- 6.3.1 Students must receive a Personalized Learning Plan when one or more of the following conditions exist:
 - 1) Strategies beyond robust instruction are required.
 - 2) Behavioural supports, as outlined in section 6.6 of *Policy 703 Positive Learning and Working Environment*, are required.
 - 3) The common learning environment is to be varied in accordance with section 6.4 of this policy.
- 6.3.2 A principal must ensure:
 - A PLP is developed by a planning team consisting of the school administration, teacher(s), relevant members of the Education Support Services (ESS) Team, as well as parents, the student, and educational assistants as appropriate, and support people from community organizations as required.



- 2) A PLP is developed based on the strengths, learning preferences and needs of the student, in consideration of requirements of the curriculum. It contains personalized goals consistent with the requirements of the curriculum with clearly identified teaching strategies and methods of evaluation.
- A PLP provides for the full instructional hours of the student, based on his or her grade level. Exceptions regarding instructional hours – including student transportation arrangements impacting regular instructional hours – must be indicated and justified in the PLP.
- 4) Access to technological supports when appropriate and where needed to remove barriers to learning, in accordance with the assessment and recommendations of the ESS Team, and in accordance with protocols established by the New Brunswick Human Rights Commission on the school's duty to accommodate.
- 5) That in high school, particularly in the two-year period prior to the anticipated completion of the student's education, the PLP includes transition strategies developed in collaboration with the student, his or her parents and any representatives from community agencies that will be involved in the student's life following high school.
- 6.3.3 Classroom teachers must:
 - 1) Base the PLP on the prescribed provincial curriculum to the greatest extent appropriate for the student.
 - 2) Develop, implement and update the PLP (whenever significant modifications are required) in collaboration with parents, the student, teachers, ESS Team members, including relevant educational assistants, professionals and representatives from community agencies as required.
 - 3) Receive, review and update the PLP when a student transitions from another grade and/or school, in consultation with parents, the student, members of the ESS Team, including relevant educational assistants and other professionals as required.
 - 4) Ensure lesson plans and instructional strategies reflect the requirements of the PLP.
 - 5) Monitor and evaluate, on an on-going basis, the effectiveness of the instructional strategies identified in the PLP, as well as the appropriateness of the identified goals and outcomes.
 - 6) Provide formal progress reports for students with a PLP on the same document (report card) and at the same time as this is done for all other students, as well as providing documentation of progress on the PLP to parents or independent students.



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6.4 Variation of the Common Learning Environment

- 6.4.1 Under specific conditions, a variation of the common learning environment may be necessary to address the needs of a student.
- 6.4.2 Prior to varying the common learning environment, it must be clearly demonstrated that the school's capacity to meet the needs of the student, even when supported by the school district and EECD, is not sufficient to achieve the learning outcomes of the student in a more inclusive environment despite all reasonable efforts to provide support and accommodation.

"Demonstrated" means: based on review of available evidence, including documentation of progress on learning outcomes, and results of supports and accommodations provided. Such evidence must be reviewed by appropriate school personnel in consultation with parents.

- 6.4.3 Decisions to vary the common learning environment must meet the following conditions:
 - 1) A personalized learning plan respecting the requirements of section 6.3 is created for the student;
 - When a student requires learning outcomes other than those of the provincial curriculum, his or her parents are fully informed of, and have consented to, the anticipated effects on the education of the student;
 - A justifiable, rational connection is demonstrated between a student's needs/abilities, the learning program, the learning outcomes, and the assessment of learning;
 - 4) On-going documentation and monitoring of success in achieving each learning outcome are in place;
 - Clear measures are established to ensure inclusion in the social life of the school, including co-curricular activities that provide the student access to a wide range of peers;
 - 6) Explicit statements are included within the student's learning plan of the expected duration of the time outside the common learning environment and the plan for the student's return to the common learning environment;
 - Progress reports on the use of personalized learning environments and the progress of students, including the anticipated date of return to the common learning environment are provided by principals to the superintendent in November and March;
 - 8) A yearly summary of progress reports on the use of personalized learning environments is submitted by principals to the superintendent by June 30 and a summary of this information will be provided to the EECD by August 15.



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6.4.4 If a student is out of school for an extended period (more than two weeks), and it is determined, through the personalized learning plan of the student, that home tutoring is the primary or only education received, the student must be offered a minimum of eight (8) hours up to a maximum of twelve (12) hours of tutoring per week, as appropriate.

6.5 Behaviour Crisis Response

A behaviour crisis is a situation where a student's conduct or actions pose imminent danger of physical harm to self or others.

- 6.5.1 To be prepared to respond to a behaviour crisis, a principal must:
 - Ensure that a School Positive Learning and Working Environment plan, as per section 6.2 of *Policy 703 – Positive Learning and Working Environment*, is in place to effectively manage any behavior crisis within the learning environment so that students are removed from the school only when all other options have been exhausted.
 - 2) Establish practices that create a welcoming and supportive learning environment and promote, recognize and reinforce appropriate student behavior.
 - 3) Implement evidence-based practices designed to teach pro-social behaviours for students with behavioural challenges.
- 6.5.2 When a behaviour crisis occurs, a principal must:
 - 1) Ensure time-out procedures are in compliance with *Policy 703 Positive Learning and Working Environment*, and any specific guidelines issued by EECD.
 - 2) Ensure any removal from the common learning environment is temporary.
 - 3) Ensure any removal from the common learning environment is never used as a punishment. School protocols and personalized learning plans must have measures in place to guard against the effect of humiliating or intimidating the student.
 - 4) Follow guidelines and standards of practice about emergency physical intervention and supervised de-escalation, including requirements for documentation and reporting, as per relevant departmental policy.
 - 5) Ensure that emergency physical intervention and/or supervised de-escalation are only used as a last resort in an emergency situation, when doing so does not endanger the student, and where continuous monitoring is provided.



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6.6 Suspensions

A principal must:

- 6.6.1 Follow procedures for student suspension as permitted by the *Education Act* and *Policy 703 Positive Learning and Working Environment*.
- 6.6.2 Develop strategies and interventions to minimize the need to suspend students from class or from school by utilizing the professional skills of the school-based Education Support Services (ESS) Team as well as the district-based ESS Team.

6.7 Grade Retention

- 6.7.1 New Brunswick public schools must not use grade retention as a standard educational practice.
- 6.7.2 While grade retention is not a standard practice, if the school and/or parents consider it appropriate in an individual case, the superintendent must:
 - 1) Ensure teachers that are familiar with the student's progress and instructional needs complete an instructional assessment;
 - 2) Explore alternatives with the ESS Team and the parents;
 - 3) Inform the parents of research and data regarding the impacts of grade retention;
 - 4) Arrive at a decision, in collaboration with the student's parents, if possible; and,
 - 5) Sign and maintain a record of the decision and supporting documentation.
- 6.7.3 When grade retention is supported, the principal must ensure a PLP is created, indicating how the teaching strategies, approaches and supports will be different in the upcoming school year than in the past to address the student's learning needs.
- 6.7.4 The superintendent must monitor and review grade retention records to ensure grade retention is not used inappropriately, and inform parents of their right to appeal the decision if they are not in agreement.

6.8 Graduation

- 6.8.1 In accordance with *Education Act* and *Policy 316 Graduation Requirements*, a single version of the New Brunswick High School Diploma must be granted to students who successfully complete a program of studies prescribed by the Minister. This includes completion of an individually prescribed PLP.
- 6.8.2 Any graduation ceremony must be consistent with the principles of respect, equity and inclusion.



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- 6.8.3 Distribution of diplomas at a graduation ceremony must proceed in an equitable order without any division of students based on performance.
- 6.8.4 Sections 6.8.2 and 6.8.3 do not preclude the presentation of awards and prizes at graduation ceremonies.

6.9 District-Based Education Support Services (district-based ESS) Team

- 6.9.1 Each superintendent must establish a district-based ESS Team, led by the Director of Education Support Services, which includes district education support teachers (resource, literacy, numeracy and francization), subject coordinators, psychologists, speech language therapists, social workers and other district-based staff that provide support to school-based ESS Teams. The work of the district-based staff will be coordinated through the respective Education Centre. Where appropriate, this would include connecting with the Integrated Service Delivery (ISD) Child and Youth Development Team.
- 6.9.2 The purpose of the district-based ESS Team is to support the school-based ESS Team as follows:
 - 1) Ensure the capacity-building and skill development initiatives of the district and EECD are linked to the needs of school-based staff.
 - 2) Liaise with school-based ESS teams to identify the effectiveness and success of teacher and student supports.
 - 3) Support the school-based ESS Team to identify the needs of school staff for professional growth and skill development.
 - 4) Ensure that specialized expertise of district staff is appropriately utilized to assist school-based staff to develop programs and strategies that facilitate student success in learning.
 - 5) Focus activities and work plans on strengthening the capacity of the school-based team to solve problems and remove barriers to student success.
- 6.9.3 District-based ESS Team members must be available to support school-based ESS Teams and review written records or attend meetings periodically to support the work of the team.
- 6.9.4 The superintendent must review the work of the district-based ESS Team at least on an annual basis to ensure that it is effectively meeting the outcomes described above.



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6.10 School-Based Education Support Services (school-based ESS) Team

- 6.10.1 The principal must establish and operationalize a school-based ESS Team to provide systemic support (e.g., coordination) to classroom teachers.
- 6.10.2 The school-based ESS Team must operate under the leadership of the principal and consist of school-based staff, including education support teachers (e.g., resource, guidance, literacy, numeracy, and francization) and others as appropriate.
- 6.10.3 The school-based ESS Team must meet on a regular basis, preferably once a week but at least every 10 school days, to develop strategies to support teachers in meeting students' needs and to reduce barriers to students' success in learning; solve specific problems; address systemic issues as well as those issues that are teacher- or student-specific; and maintain written records of their meetings.
- 6.10.4 Professionals from other government departments should participate, as needed, including members of the Integrated Service Delivery Child and Youth Development Team. Involvement of external professionals must be in compliance with the *Right to Information and* the *Protection of Privacy Act* and the *Personal Health Information Privacy and Access Act*.

6.11 Guidelines and Standards of Practice

A superintendent must ensure:

- 6.11.1 Members of the district- and school-based Education Support Services (ESS) Teams adhere to the standards of practice established by EECD for their respective positions.
- 6.11.2 Education support teachers resource (EST-Resource) must have the necessary experience, competencies, skills and knowledge to perform their duties, consistent with the standards of professional practice established by EECD.
- 6.11.3 EST-Resource must adhere to the following time allocation over the course of the school year, recognizing that the percentage of time spent on administrative duties will be higher in the first and last month of the school year:
 - Minimum of 60% of time spent on directly supporting and collaborating with classroom teachers. For example, classroom observation, co-planning of instruction, initiating and supporting instructional strategies, problem solving, modeling, coteaching, coaching and associated activities.
 - 2) Maximum of 25% of time spent on direct instruction or intervention with small groups of children, and occasionally, with individual students, but in all cases with specific entry and exit criteria, and documentation of outcomes achieved.



3) Maximum of 15% of time spent on administrative duties directly associated with supporting teachers and students. For example, work on personalized learning plans, working with educational assistants, consulting with other professionals, meetings and performing other related functions.

6.12 Funding

A superintendent must:

- 6.12.1 Ensure that funding allocated for Education Support Services is used solely for that purpose.
- 6.12.2 Utilize the funding norms established by EECD to provide staff allocations that are equitable in providing essential services and supports, based on identified school needs and priorities.
- 6.12.3 Distribute ESS staff, including education support teachers and educational assistants, among district schools based on school enrolment and an assessment of relative needs and priorities.
- 6.12.4 Ensure that consideration is given to enhanced supports for individual schools to meet identified needs that are evidence-based and objectively defined.
- 6.12.5 Maintain appropriate funding sufficient to meet student and teacher needs that may not be anticipated prior to the start of the school year, and that require additional resources.

6.13 Accountability

- 6.13.1 The superintendent must monitor and evaluate the performance of each school based on appropriate performance indicators for inclusive education.
- 6.13.2 On-going professional development for administrators, teachers, educational assistants, and other professionals is essential to the implementation of inclusive education and is reflected in the school improvement plan and the district education plan.

6.14 Protection of Privacy

The sharing of personal information about a student must be in compliance with the *Right to Information and Protection of Privacy Act* and the *Personal Health Information Privacy and Access Act.*



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7.0 GUIDELINES/RECOMMENDATIONS

N/A

8.0 DISTRICT EDUCATION COUNCIL POLICY-MAKING

A District Education Council may develop policies and procedures that are consistent with, or more comprehensive than, existing provincial policies.

9.0 REFERENCES

Education Act (<u>http://laws.gnb.ca/en/BrowseTitle</u>)

Policy 703 – Positive Learning and Working Environment (<u>http://www.gnb.ca/0000/policies.asp</u>) Policy 316 – Graduation Requirements (<u>http://www.gnb.ca/0000/policies.asp</u>)

New Brunswick Human Rights Act (http://laws.gnb.ca/en/BrowseTitle)

Canadian Charter of Rights and Freedoms (<u>http://laws-lois.justice.gc.ca/eng/const/page-15.html</u>)

United Nations Convention on the Rights of the Child (<u>http://www.pch.gc.ca/ddp-hrd/docs/crc-enq.cfm</u>)

United Nations Convention on the Rights of Persons with Disabilities (http://www.un.org/disabilities/convention/conventionfull.shtml)

Government's Response to the Recommendations: Strengthening Inclusion, Strengthening Schools (http://www.gnb.ca/0000/publications/comm/InclusionActionPlanReport.pdf) Strengthening Inclusion, Strengthening Schools

(http://www.gnb.ca/0000/publications/comm/Inclusion.pdf)

Standards of Practice for Education Assistants

(http://www.gnb.ca/0000/publications/curric/teacherassisguide.pdf)

Standards of Practice for Education Support Teachers

Standards of Practice for School Psychologists

(http://www.gnb.ca/0000/publications/ss/Guidelines%20for%20Professional%20Practice%20for %20School%20Psychologists.pdf) Standards of Practice for Social Workers

Standards of Practice for Speech Language Pathologists

10.0 CONTACTS FOR MORE INFORMATION

Department of Education and Early Childhood Development – Educational Services - Anglophone Sector (506) 453-3326

Department of Education and Early Childhood Development – Policy and Planning Division (506) 453-3090

ORIGINAL SIGNED BY

New WBrunswick

POLICY 410

Subject:	Accessibility of Schools for the Physically Disabled
Effective:	July 1, 1980
Revised:	June 1994; July 1, 2001

1.0 PURPOSE

This policy aims to establish requirements for the physical accessibility of schools for physically disabled persons.

2.0 APPLICATION

This policy applies to all school districts.

3.0 DEFINITIONS

None

4.0 LEGAL AUTHORITY

Education Act – Sections:

- 12(1) Where the superintendent concerned, after consultation with qualified persons, determines that the behavioural, communicational, intellectual, physical, perceptual or multiple exceptionalities of a person are contributing to delayed educational development such that a special education program is considered by the superintendent to be necessary for the person, that person shall be an exceptional person for the purpose of this Act.
- 12(3) The superintendent concerned shall place exceptional pupils such that they receive special education programs and services in circumstances where exceptional pupils can participate with pupils who are not exceptional pupils within regular classroom settings to the extent that is considered practicable by the superintendent having due regard for the educational needs of all pupils.
- 45(1) All school property is vested in the Minister.
- 45(4)(b) The Minister shall determine the physical plant standards for a safe and healthy school facility.
- 45(4)(d) The Minister in consultation with the District Education Council concerned, may construct and furnish schools, school district offices and other school buildings.

ORIGINAL SIGNED BY

MINISTER

New Brunswick

POLICY 410

5.0 GOALS / PRINCIPLES

Every effort will be made to make all schools fully accessible to physically disabled persons.

6.0 REQUIREMENTS / STANDARDS

6.1 New Construction

6.1.1 All new school buildings shall be barrier free to the physically disabled.

6.2 Existing Buildings

- **6.2.1** Where additions and major renovations are being carried out on existing school buildings, every effort will be made to make the buildings barrier free as required to meet the needs of physically disabled persons.
- **6.2.2** Requests for school modifications shall be incorporated in the submission under the capital improvement program.

7.0 GUIDELINES / RECOMMENDATIONS

None

8.0 DISTRICT EDUCATION COUNCIL POLICY-MAKING

A District Education Council may establish policies regarding the maintenance of facility modifications for the physical accessibility of physically disabled persons, not inconsistent with this policy.

9.0 REFERENCES

None

10.0 CONTACTS FOR MORE INFORMATION

Department of Education – Educational Facilities Branch (506) 453-2242

ORIGINAL SIGNED BY

Subject:Policy for the Protection of PupilsEffective:September 26, 1996Revised:September 1998, November 2004

1.0 PURPOSE

This policy is intended to:

- protect pupils from non-professional conduct by adults to which pupils may be exposed by virtue of being pupils, including physical, sexual, and emotional abuse and discrimination;
- ensure that adults in the public education system understand the magnitude of the responsibility conferred upon them when parents and communities entrust their children to the public education system; and
- eliminate non-professional conduct through the defining of acceptable standards of behaviour, prevention and effective intervention.

2.0 APPLICATION

2.1 To whom does this policy apply?

This policy protects all pupils who are registered in public schools in New Brunswick regardless of their age. This policy applies to all adults whose job or role within the public school system places them in contact with pupils. This includes, but is not limited to, all school personnel, contract and casual employees, visiting professionals, as well as student teachers and volunteers.

2.2 Under what circumstances does this policy apply?

- Whenever a pupil is the responsibility of the school system.
- When an adult affiliated with the school system abuses any child, whether the child is a pupil or not.
- When external agencies are involved and when they are not.

3.0 DEFINITIONS

Complainant in this policy refers to a person reporting non-professional conduct.

Complaint in this policy refers to any information received by any means from any named or anonymous source, either in person or recorded, which suggests that a child is being, or has

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MINISTER

New Brunswick

been, subjected to non-professional conduct by an adult in the school system. Concerns about inappropriate behaviour management are not treated as complaints under this policy.

Conduct categories This policy deals with behaviours that harm students and impede learning. These behaviours are grouped into two categories: abuse and misconduct, and are treated as non-professional conduct under the *Education Act*. Other unacceptable, but less serious behaviours are addressed in the guidelines section of this policy and are referred to under the heading of inappropriate behaviour management.

Category I: Abuse refers to behaviour of adults in the school system which has one or more of the following components:

- is counter to the position of trust conferred upon adults in the school system;
- is a breach of section 31(1) of the <u>Family Services Act</u>;
- is a <u>Criminal Code</u> offence involving children; or
- is a form of discrimination under the <u>New Brunswick Human Rights Act</u> or the <u>Canadian Charter of Rights and Freedoms</u> that is likely to have an injurious effect on students.

Examples of Abuse

- discriminatory behaviour based on race, colour, religion, national or ethnic origin, ancestry, place of origin, age, disability, marital status, sexual orientation, sex, culture, language group, or grade level;
- behaviour of a sexual nature with pupils such as: making or accepting sexual advances or invitations, asking for a date, touching inappropriately or having a sexual relationship; and
- behaviour which is considered physical, sexual or emotional abuse or neglect of a child whether or not the child is a pupil in the public school system.

Category II: Misconduct is negative conduct towards pupils that would be judged inappropriate by professionals in the New Brunswick public education system. It is less severe than abuse but has damaging effects on the physical, mental, social or emotional well-being of pupils. These effects may or may not be intended.

Examples of Misconduct

- attempting to pursue, isolate or see pupils individually without valid reason;
- behaviour which may not necessarily be directed at anyone in particular but creates a hostile or offensive atmosphere;
- behaviour which would objectively be considered offensive or insulting, exceeding reasonable limits of discipline and has remained unremedied after normal intervention by supervisors. This includes:
 - comments, conduct or displays which demean, belittle, or cause unfair disadvantage;
 - staring, perceivable to an observer, at genitals, breasts or buttocks; and
 - making sexual gestures or inappropriate comments or jokes.

Examples of Appropriate Behaviour

- normal work or achievement evaluations and disciplinary measures taken for valid reasons which are consistent with the <u>Education Act</u>;
- physical force or restraint not exceeding that required for the protection of an orderly learning environment, personal safety, the protection of others, or the protection of school property;
- compliments which respect an individual's dignity;
- patting the back, holding the hand, or hugging to comfort a pupil as appropriate to the situation and the physical or developmental age of the child; and
- assisting with toileting or personal care to the extent that a pupil is not able to perform these tasks without assistance.

False accusation means a complaint under this policy which the complainant knew to be untrue. This differs from an *unsubstantiated complaint* in that unsubstantiated complaints are made in good faith but insufficient evidence exists to either prove or disprove the veracity of the complaint. Unfounded complaints are those where the evidence demonstrates that the respondent is not guilty of a Policy 701 infraction.

Non-professional conduct is defined in section 31.1 of the <u>Education Act</u> as: "conduct having or likely to have an injurious effect on the physical, mental, social or emotional well-being of a pupil, or any other person under the age of 19 years".

Respondent refers to the person or persons against whom allegations are made under this policy.

School personnel refers to the superintendent, director of education and other administrative and supervisory personnel; school bus drivers; building maintenance personnel including custodians; secretaries and clerks; teachers; persons other than teachers engaged to assist in the delivery of programs and services to students; and other persons engaged in support areas such as social services, health services, psychology and guidance. For the purposes of this policy, school personnel includes any adult whose job or role within the public school system places him/her in contact with pupils.

POLICY 701

4.0 GOALS / PRINCIPLES

- **4.1** The Department of Education is committed to providing learning environments that are safe, orderly, inviting, and conducive to the pursuit of excellence. Adults in the public education system are essential to achieving this through the modeling of appropriate behaviour and through the care that they provide to pupils.
- **4.2** Because of the position of trust held by adults in the public education system, a student cannot give consent, in the full meaning of the word, to being the target of non-professional conduct. Failure by a student to report, or attempt to stop non-professional conduct directed at him/her, cannot be taken as justification for non-professional conduct. Moreover, ignorance of acceptable conduct will not be considered an excuse for non-professional conduct.
- **4.3** Education is the most basic prevention. Abusive behaviour must be treated as destructive, seriously affecting individuals and the school system as a whole.

5.0 REQUIREMENTS / STANDARDS

5.1 **PREVENTION**

5.1.1 Screening Practices

- **5.1.1.1** Superintendents shall ensure screening procedures, appropriate to a person's role vis-à-vis students, are carried out for all persons who act on the superintendent's behalf in the school system, including volunteers.
- **5.1.1.2** Any previous incident that would be classified as non-professional conduct must be evaluated in relation to the requirements of the position.
- **5.1.1.3** No person shall be considered for duty in the New Brunswick public school system if:
 - pending or past disciplinary actions by previous employers or supervisors call into question the individual's suitability for being in contact with pupils;
 - there are previous convictions for violent crimes or crimes against children; or
 - there are previous charges related to violent crimes or crimes against children which did not result in conviction solely as a result of technical reasons stated in the court decision.

POLICY 701

5.1.2 References

- A person whose conduct has resulted in disciplinary action under this policy, to the extent of suspension or stronger measures, who requests a letter of reference, must be informed that the disciplinary action will be indicated in the letter of reference. The same applies to ongoing investigations that, on the balance of probabilities will result in suspension or stronger action.
- Knowingly issuing a reference that is incomplete or dishonest is a violation of this policy.

5.2 **RESPONSIBILITIES**

Disagreements over student evaluations, student awards, student placement decisions and normal disciplinary action, including exclusion from co-curricular and extracurricular activities for cause, do not fall within the scope of this policy and must be addressed with school and district personnel.

5.2.1 The superintendent shall ensure that:

 adults whose job or role within the public school system place them in contact with pupils are familiar with and adhere to Policy 701 and the <u>Child Victims of Abuse</u> <u>and Neglect Protocols</u>.

5.2.2 The school principal shall ensure that:

- staff, students and all persons acting within or for the school are informed about the ethical obligation to report non-professional conduct, as well as the legal obligation to report under section 31.1 of the <u>Education Act</u> and subsection 30(1) of the <u>Family Services Act</u> as described in the <u>Child Victims of Abuse and Neglect</u> <u>Protocols</u>;
- staff, pupils, parents and all persons acting within or for the school are informed about the gravity of making false accusations and the ethical obligation to report cases of false accusation;
- all persons involved in a case are informed of the need to keep the information pertaining to the case confidential; and
- all complaints of abuse and misconduct received at the school level are recorded on a *Policy 701 Complaint Summary Form* (included in <u>Appendix A</u>) and forwarded to the superintendent.

5.3 THE COMPLAINT INVESTIGATION PROCESS: CATEGORIES I & II - COMPLAINTS CONCERNING ABUSE AND MISCONDUCT RECEIVED AT THE SCHOOL LEVEL

5.3.1 Step 1: Receiving a Complaint

A complaint may be made by any person.

The principal or designate, the superintendent or designate and Director of Human Resources of the Department of Education or designate shall ensure that each complaint received at their respective level in the public education system is pursued in acordance with this policy and a *Policy 701 Complaint Summary Form* (Appendix A) is duly completed. The *Policy 701 Complaint Summary Form* (Appendix A) should be signed by the complainant whenever possible.

When the principal is named as respondent, complaints shall be directed to the superintendent.

Complaints received anonymously shall be acted upon to the extent possible given the amount of information provided. This is consistent with the application of subsection 30(1) of the *Family Services Act*.

If a situation is reportable under section 30(1) of the <u>Family Services Act</u>, the first member of the school personnel who is made aware of the complaint shall notify Child Protection Services personally or verify with Child Protection Services that a report was received. The police shall be notified whenever school personnel believe criminal activity may be involved.

In addition, under section 31.1 of the <u>Education Act</u>, all school personnel who have reasonable grounds to believe that any member of the school personnel has engaged in non-professional conduct shall report to the superintendent.

5.3.2 Step 2: Initial Assessment of a Complaint

The principal shall refer all complaints made under this policy concerning nonprofessional conduct to the superintendent's office. The superintendent will make an initial assessment of the complaint and will re-direct those which fall outside of the scope of this policy to the principal for resolution.

5.3.3 Step 3: Superintendent's Decision to Pursue an Investigation

The superintendent shall:

- determine the type and seriousness of the complaint and determine whether an investigation is necessary;
- assign an investigator/investigation team as quickly as possible, when required;

- verify that complaints under section 30 of the <u>Family Services Act</u> have been reported to Child Protection Services;
- proceed with appropriate action as required by the situation and which may include invoking the normal disciplinary procedure; and
- immediately advise the Director of Human Resources of the Department of Education in writing when the superintendent has decided to launch an investigation.

5.3.4 Step 4: The Respondent's Rights

The respondent shall be informed of the complaint at a face-to-face meeting in the workplace as soon as possible. He/she shall also be provided with a written statement of allegations at that time or as soon as possible thereafter, unless school personnel are otherwise directed by the police or Child Protection Services. In the latter case, the respondent shall be advised that an investigation has been launched and that further information will be provided by the police or Child Protection Services, as the case may be. The respondent shall be informed <u>at the latest</u> when an investigation is launched under this policy.

The superintendent shall keep the respondent informed of the progress of the investigation.

Prior to the conclusion of the investigation, the respondent shall be afforded an opportunity to respond to the allegations. Every effort will be made to keep the complainant's/pupil's identity confidential. However, in order to adequately address a situation, it may be necessary to release the complainant's/pupil's name to investigators and possibly to the respondent. The complainant's/pupil's identity will not be disclosed when this would foreseeably place the complainant/pupil at risk of harm.

The respondent shall also be informed of his/her right to be accompanied, at any point in the investigation process, by a person of the respondent's choosing, or to have union representation where applicable.

Regardless of the involvement of external agencies, the superintendent shall ensure investigations are concluded in a timely manner. Internal investigations should normally be concluded within three months, taking particular circumstances into account. Where external agencies are involved, the investigation team shall conduct a joint investigation with the external agencies and/or make use of information obtained by external agencies, to the extent possible.

5.3.5 Step 5: The Investigation Report

At the conclusion of the investigation, the investigation team shall provide a written report to the superintendent. This report shall describe the investigative procedure used, describe the events in detail, and state whether the complaint was founded, unfounded, unsubstantiated or false. This report will include the names of the complainant, if available, and the respondent.

5.3.6 Step 6: Meeting with the Respondent

When disciplinary measures are contemplated, the respondent will be given the opportunity to meet with the superintendent or designate. At the respondent's discretion, he/she may be accompanied by a union representative, if applicable. The respondent will have the opportunity to respond to the findings of the investigation.

5.3.7 Step 7: Communicating the Outcome of an Investigation

The superintendent shall forward the report and his/her recommendations regarding the disposition of the case to the Director of Human Resources of the Department of Education. In cases where there is to be a resignation or any disciplinary action related to non-professional conduct, this action is subject to approval by the Minister.

The pupil alleged to have been subject to non-professional conduct, his/her parents (if appropriate) and the complainant, where applicable, shall be informed in writing of the following:

- whether the complaint was determined to be founded, unfounded, unsubstantiated or false;
- any action to be taken that pertains to the student, for example, any accommodation that is to be introduced for the benefit of the student; and
- the ethical obligation to keep confidential the information shared.

The respondent shall be notified in writing of the disposition of the complaint and any disciplinary action that is to be noted in the employee file, where applicable.

The information provided to all parties must respect the confidential nature of such cases and the protection provided by sub-section 31.1(9) of the <u>Education Act</u> which prohibits revealing the names of school personnel and professional persons who have reported reasonable belief of non-professional conduct.

5.3.8 Step 8: Support for Victims

The superintendent shall address counselling support during the period of the investigation and after resolution of the situation for the complainant, other pupils who may have been traumatized and/or the respondent in the case of false allegation.

5.4 SPECIAL CIRCUMSTANCES

5.4.1 Complaint received at the School District Office

The school district office shall be the point of contact in dealing with complaints against school personnel who are supervised by district office staff and complaints against school principals. Section 5.3 will be followed as appropriate.

5.4.2 Complaint received at the Department of Education

Complaints received at the Department of Education, shall be referred to the Human Resources Branch which shall ensure the superintendent is notified. Section 5.3 will be followed by the superintendent, as appropriate.

5.4.3 Respondent no longer active in the school system or dated complaints

This section refers to situations where the ability to investigate is limited due to a significant lapse of time or the inability to obtain information from the respondent. In such cases, the superintendent shall consult with Child Protection Services when applicable. If it is likely that the incident involved a breach of the <u>Criminal Code</u> in effect at the time, the incident should be referred to the police. As with any other case involving non-professional conduct, the superintendent shall report dated complaints to the Director of Human Resources of the Department of Education.

5.4.4 Non-professional conduct external to the school system

Any member of the school personnel who has reasonable grounds to believe that any adult who is in contact with pupils in the public school system has been charged with any violent crime or crime against a child, or who has otherwise engaged in non-professional conduct, shall immediately inform the superintendent of the school district in which the person is active. The superintendent shall inform the Director of Human Resources of the Department of Education.

5.4.5 Non-professional conduct reported by a professional who is not a member of the school personnel

As per sub-section 31.1(5) of the <u>Education Act</u>, any professional who is not a member of the school personnel shall immediately report to the Minister of Education, the name of any member of the school personnel who he or she has reasonable grounds to believe has engaged in non-professional conduct. Such reports are to be made to the Director of Human Resources of the Department of Education.

5.5 RECORD-KEEPING

5.5.1 At the School:

Documentation pertaining to any complaint under Policy 701 will be accessible to the principal and his/her designate only. Any other release of information will be done

through the superintendent's office. The original *Policy 701 Complaint Summary Form* (<u>Appendix A</u>) completed at the school, shall be maintained in a confidential file at the school until notification of the final outcome of the complaint is received from the superintendent's office. At that time, all documentation pertaining to the complaint shall be forwarded to the superintendent's office and none maintained at the school.

5.5.2 At the School District Office:

A copy of every *Policy 701 Complaint Summary* (<u>Appendix A</u>), investigation report and all other supporting documentation shall be maintained in a confidential file by the Human Resource section at the school district office. Access to these files shall be limited to the superintendent and his/her designate(s).

Disciplinary actions shall be maintained in the employee file as per subsection 31.1(13) of the *Education Act*.

5.5.3 At the Human Resources Office of the Department of Education:

A copy of every *Policy 701 Complaint Summary* (<u>Appendix A</u>), investigation report and all other supporting documentation pertaining to non-professional conduct forwarded to the Director of Human Resources shall be maintained in a confidential file regardless of the outcome of the investigation. This includes records of complaints against persons who are not members of the school personnel and complaints determined to be false allegations. Access to this file is restricted to the Director of Human Resources and his/her designate(s).

5.6 DISCIPLINARY ACTION

Judgments concerning the acceptability or classification of a behaviour shall not rest with any one individual but shall be weighed in the light of accepted professional standards.

Disciplinary action will reflect the seriousness of the non-professional conduct and shall take any relevant previous discipline into account. In all instances where an employee has a sexual relationship with a pupil, or sexually abuses a pupil, this shall be cause for dismissal of the employee.

5.6.1 False Accusations

The superintendent shall take action in every case of proven false accusation.

A complaint under this policy that involves falsehood or malicious intent or is otherwise made in bad faith, as determined by the investigation, shall be subject to appropriate disciplinary action up to and including suspension in the case of pupils, dismissal of employees or banning from school premises and possible legal action in the case of parents and volunteers. Disciplinary action taken by the school system does not preclude the respondent from pursuing civil action.

6.0 GUIDELINES / RECOMMENDATIONS

NOTE: <u>This section provides guidance for addressing conduct which is undesirable but</u> is not reportable as an infraction under Policy 701.

6.1 GUIDELINES FOR ADDRESSING INAPPROPRIATE BEHAVIOUR MANAGEMENT

Inappropriate Behaviour Management refers to an approach to dealing with pupils that is counterproductive to learning and/or maintaining a positive learning environment in the school, as defined in Policy 703 – <u>Positive Learning Environment</u>. It reflects poor judgment or limited behaviour management skills. It is not abuse or misconduct as defined by this policy. It must be treated by supervisors as any personnel issue which requires supervision.

Examples of Inappropriate Behaviour Management

- personal attacks on pupils' characters rather than dealing with their behaviour;
- continuous use of sarcasm;
- undue, non-constructive criticism in dealing with pupils; and
- habitual uncontrolled temper.

6.1.1 Responsibilities of the Superintendent

The supervisor of the person against whom such a complaint is lodged is accountable for ensuring it is appropriately identified, monitored, resolved and documented. Reporting criteria will be determined by superintendents. In addition, it is the supervisor's role to be aware of potential areas of weakness and act proactively, ensuring inappropriate behaviour management is addressed. Additional training and monitoring may be required to assist the employee in improving interpersonal or management skills.

6.1.2 **Responsibilities of the Principal**

Once the principal has determined that an action falls into the realm of inappropriate behaviour management, the principal will:

- inquire as to whether the complaint was directed to the person(s) involved and encourage this to be done;
- attempt to establish communication among parents, staff and pupils involved to resolve the issue at the school level if possible; and
- to guide, monitor (and inform the superintendent if necessary) when inappropriate behaviour management is identified.

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6.1.3 Reporting Procedures

Step 1: Complaints involving inappropriate behaviour management must be dealt with initially at the school level. Persons having a complaint which does not involve abuse or misconduct are encouraged to communicate their concerns directly to those involved. If the outcome is unsatisfactory, the complaint should be directed to the principal or vice-principal.

Step 2: Situations that are not satisfactorily resolved at the school level may be forwarded to the superintendent by the complainant or school administrators. However, prior to intervening in such situations, district staff shall request that complaints are brought to the attention of the school administration. Likewise, Department of Education staff receiving such complaints shall verify that school and district staff have been involved in the complaint process.

Documentation of complaints of inappropriate behaviour management should follow normal human resources practices.

7.0 DISTRICT EDUCATION COUNCIL POLICY-MAKING

District Education Councils may establish policy, within the parameters of this policy and the *Education Act*.

8.0 LEGAL AUTHORITY

Education Act

6(a) The Minister shall establish educational goals and standards and service goals and standards

Mandatory reporting of non-professional conduct

31.1(1) In this section

"administrative proceedings" includes hearings before an adjudicator under the <u>Public Service</u> <u>Labour Relations Act</u> and hearings before the Appeal Board;

"professional person" means a professional person as defined in subsection 30(10) of the *Family Services Act*.

31.1(3) A superintendent shall report to the Minister the name of any teacher or other member of the school personnel who

- (a) has been convicted of an indictable offence under the Criminal Code (Canada),
- (b) in the case of a teacher, the superintendent has reasonable grounds to believe has committed an act which may be grounds for the suspension or revocation of the teacher's certificate, or

(c) is investigated, is disciplined or resigns because of non-professional conduct or alleged non-professional conduct.

31.1(4) A member of the school personnel shall immediately report to the superintendent concerned the name of any member of the school personnel who he or she has reasonable grounds to believe has engaged in non-professional conduct.

31.1(5) A professional person who is not a member of the school personnel shall immediately report to the Minister the name of any member of the school personnel who he or she has reasonable grounds to believe has engaged in non-professional conduct.

31.1(6) This section applies notwithstanding that the person has acquired the information through the discharge of his or her duties or within a confidential relationship.

31.1(7) A person who fails to comply with subsection (3), (4) or (5) commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a category F offence.

31.1(8) No action lies for damages or otherwise against a person in relation to anything done or purported to be done in good faith, or in relation to anything omitted to be done in good faith, in the execution or intended execution of the duty to report under this section.

31.1(9) Except in the course of judicial or administrative proceedings, no person shall reveal the identity of a person who has given information under this section without that person's written consent.

31.1(10) A person who violates subsection (9) commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a category H offence.

31.1(11) Any agreement respecting a resignation of a member of the school personnel in relation to non-professional conduct or any disciplinary action to be taken against a member of the school personnel in relation to non-professional conduct is subject to the prior approval of the Minister.

31.1(12) The Minister may take such action as the Minister considers appropriate if, in the opinion of the Minister, a matter reported to the Minister under this section

- (a) has been inadequately investigated, or
- (b) may result in an inappropriate agreement respecting a resignation of a member of the school personnel or in inappropriate disciplinary action against a member of the school personnel.

31.1(13) Notwithstanding any provision in any collective agreement under the <u>Public Service</u> <u>Labour Relations Act</u>, any information maintained in the file of a member of the school personnel with respect to a resignation or a disciplinary action taken in relation to nonprofessional conduct shall not be removed.

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Family Services Act

30(1) Any person who has information causing him/her to suspect that a child has been abandoned, deserted, physically or emotionally neglected, physically or sexually illtreated or otherwise abused shall inform the Minister (of Family and Community Services; read Child Protection Services) of the situation without delay.

30(3) A professional person who acquires information in the discharge of the professional person's responsibilities that reasonably ought to cause the professional person to suspect that a child has been abandoned, deserted, physically or emotionally neglected, physically or sexually ill-treated or otherwise abused but who does not inform the Minister of the situation without delay commits an offence.

30(10) For the purposes of this section "professional person" means a physician, nurse, dentist or other health or mental health professional, an administrator of a hospital facility, a school principal, school teacher or other teaching professional, a social work administrator, social worker or other social service professional, a child care worker in any day care center or child caring institution, a police or law enforcement officer, a psychologist, a guidance counsellor, or a recreational services administrator or worker, and includes any other person who by virtue of his employment or occupation has a responsibility to discharge a duty of care towards a child.

31(1) The security or development of a child may be in danger when

- (a) the child is without adequate care, supervision or control;
- (b) the child is living in unfit or improper circumstances;
- (c) the child is in the care of a person who is unable or unwilling to provide adequate care, supervision or control of the child;
- (d) the child is in the care of a person whose conduct endangers the life, health or emotional well-being of the child;
- (e) the child is physically or sexually abused, physically or emotionally neglected, sexually exploited or in danger of such treatment;
- (f) the child is living in a situation where there is domestic violence;
- (g) the child is in the care of a person who neglects or refuses to provide or obtain proper medical, surgical or other remedial care or treatment necessary for the health or well-being of the child or refuses to permit such care or treatment to be supplied to the child;
- (*h*) the child is beyond the control of the person caring for him;
- *(i)* the child by his behaviour, condition, environment or association, is likely to injure himself or others;

- *(j)* the child is in the care of a person who does not have a right to custody of the child, without the consent of a person having such right;
- (*k*) the child is in the care of a person who neglects or refuses to ensure that the child attends school; or
- (*I*) the child has committed an offence or, if the child is under the age of twelve years, has committed an act or omission that would constitute an offence for which the child could be convicted if the child were twelve years of age or older.

9.0 REFERENCES

Appendix A – <u>Policy 701 Complaint Summary Form</u> <u>Canadian Charter of Rights and Freedoms</u> <u>Child Victims of Abuse and Neglect Protocols</u> <u>Criminal Code</u> <u>Education Act</u> <u>Family Services Act</u> <u>New Brunswick Age of Majority Act</u> <u>New Brunswick Human Rights Act</u> Policy 703 – <u>Positive Learning Environment</u> <u>Provincial Offences Procedure Act</u> <u>Public Service Labour Relations Act</u>

10.0 CONTACTS FOR MORE INFORMATION

Human Resources – (506) 444-4914

Policy and Planning – (506) 453-3090

ORIGINAL SIGNED BY

	1 1	l conduct)04
Section I:	Notification of Complaint				
Complaint made	by:(print person's name)	Pupil			
	(print person's name)	Teacher School Adn	ninistrator		
Phone No. of Co	mplainant:		ninistrator		
		DOE Staff			
		Other perso	on(title or	relation to pupil)
Section II:	Identity of pupil believed to be	subjected to non-	professio	nal conduct (vi
Pupil:					
	name(s)		Year	Month	
School:		District:			
Parent/Guardian:	:	Phone No.			
OR					
Not applicab	le (e.g. non-professional conduct doe	es not involve a pu	pil)		
Section III:	Identity of Respondent				
Respondent:	Person against whom allegation was made	Job Title:			
Section IV:	Description of Events (attac	ch sheet if necessa	ary)		
	Signatures				
Section V:	Signatures				

Note: Every effort will be made to keep the complainant's/pupil's identity confidential. However, the steps needed to resolve this situation may require the release of the complainant's/pupil's name to investigators and possibly the respondent.

Section VI:	Reporting to FCS/Police		Pi
Has this compla	int been reported to:		
Child Protectio	n Services? 🗌 No 🗌 Y	es	
Date rep	oorted (Yr./Mo./Day)	Time:	
Name o	f person who reported		
Name o	f FCS official who received the i	report	
Police or RCMF	? No 🗌 Y	es	
Date rep	oorted (Yr./Mo./Day)	Time:	
Name o	f person who reported		
Name o	f police official who received the	e report	
Section VII:	Communication Summary	/	
when?	st person in the school system to		
Position:		_ Name:	Date:(Yr./Mc
Who completed	Part A of the Complaint Summa	ary?	
Position:		_ Name:	Date: <u>see P</u>
To whom was th	e Complaint Summary forwarde	ed?	
Position:		Name:	Date:
When was a cop	by of this complaint summary se	ent to the superintendent's office	e? Date:(Yr./Mo
Section VIII:			e? Date:(Yr./Mo
Section VIII: Have the parent	Immediate Action Taken	No 🗌 Yes 🗌	e? Date:(Yr./Mc
Section VIII: Have the parent	Immediate Action Taken s of the victim been notified?	No 🗌 Yes 🗌	e? Date:(Yr./Mo
Section VIII: Have the parent If not, why:	Immediate Action Taken s of the victim been notified? been taken to minimize the con	No 🗌 Yes 🗌	
Section VIII: Have the parent If not, why: If not, why: Have measures No Ye	Immediate Action Taken s of the victim been notified? been taken to minimize the con	No Yes No No No No Yes	spondent?
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Policy 703

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Subject:	Positive Learning and Working Environment	
Effective:	April 1, 1999	
Revised:	September 1, 2001; December 2009; December 2013	

1.0 PURPOSE

This policy provides a framework for the Department of Education and Early Childhood Development, school districts and schools in consultation with the District Education Councils to create positive learning and working environments in the public education system by:

- establishing a process for fostering positive learning and working environments that are inclusive, safe, respect human rights, support diversity and address discrimination regardless of real or perceived race, colour, religion, national or ethnic origin, ancestry, place of origin, language group, disability, sex, sexual orientation, gender identity, age, social condition or political belief or activity; and
- setting standards for behaviour and discipline, and identifying the responsibilities of all partners in the school system; and
- providing an overview of expected student behaviour in the Provincial Student Code of Conduct.

2.0 APPLICATION

The behaviour standards defined in this policy and in the School Positive Learning and Working Environment Plan apply to all participants in the public school system, on school property, on school buses and other school system-organized transportation, at schoolsponsored events, whenever the school is responsible for a student, whenever an individual is acting on behalf of or is representing the school, and in all communications related to school (e.g. meetings, both formal and informal; phone calls and written correspondence, including, emails between students and school personnel or parents and visitors and school personnel; and other instances that could have an impact on the school climate).

Additional standards for the behaviour of adults who have contact with students in the New Brunswick public school system are defined in <u>Policy 701 – Policy for the Protection of Pupils</u>.

3.0 DEFINITIONS

Parent(s) – includes guardian(s), as per the *Education Act*.

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School Personnel refers to the superintendent, district administrators, principal and other administrative and supervisory personnel; school bus drivers; building maintenance personnel including custodians; secretaries and clerks; teachers; persons other than teachers engaged to assist in the delivery of programs and services to students; and other persons engaged in support areas such as social services, health services, psychology and guidance.

Gender identity refers to a person's internal sense or feeling of being male or female, which may or may not be the same as one's biological sex.

Sexual orientation refers to an individual's psychological, emotional and/or sexual attraction towards another person.

Student(s) refers to pupil(s), as defined in the Education Act.

4.0 LEGAL AUTHORITY

Education Act

6 (b.2) The Minister may establish provincial policies and guidelines related to public education within the scope of this Act, ...

5.0 GOALS / PRINCIPLES

- **5.1** Good citizenship and civility are modeled and reinforced throughout the school community. Every person is valued and treated with respect.
- **5.2** School personnel and students in the public school system have the right to work and to learn in a safe, orderly, productive, respectful and harassment-free environment.
- **5.3** Inclusive educational practices are supported and promoted. Students are responsible for their behaviour in accordance with their age and stage of development, and to the extent to which their behaviour is voluntary. When disruptive behaviour is attributable to the student's exceptionality and he or she is unable to control this behaviour, appropriate interventions will be employed with the needs of the student in mind.
- **5.4** Students have a sense of belonging and connection, feel they are supported by school personnel, and have a positive relationship with at least one adult in the school system.
- **5.5** Parents, school personnel, district staff and the school community understand that social skills, self-discipline, respect, empathy, compassion and ethics are learned throughout life. Each partner in education through instruction and continued education supports the formation of school-based groups that promote diversity when interest is expressed by a student or staff member (examples include First Nations groups, multicultural groups, religious groups, and sexual minority groups).



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5.6 All members of the school community learn and work together in an atmosphere of respect and safety, free from homophobia, racism and all other forms of discrimination that could lead to bullying and harassment. Appropriate procedures and strategies are in place to ensure respect for human rights, support diversity, and foster a learning environment that is safe, welcoming, inclusive and affirming for all individuals.

6.0 REQUIREMENTS / STANDARDS

PART 1: FOSTERING A POSITIVE LEARNING AND WORKING ENVIRONMENT

6.1 The District Positive Learning and Working Environment Plan

- **6.1.1** Superintendents will ensure the development of a plan of assistance to ensure positive learning and working environments in their districts in consultation with their District Education Council. This plan promotes a learning environment that is inclusive, safe, respects human rights, supports diversity and addresses discrimination regardless of real or perceived race, colour, religion, national or ethnic origin, ancestry, place of origin, language group, disability, sex, sexual orientation, gender identity, age, social condition or political belief or activity.
- **6.1.2** The District Positive Learning and Working Environment Plan will include strategies for managing inappropriate behaviour by students as well as by parents or visitors when interacting with the school and school personnel, consistent with the <u>Education Act</u>, the New Brunswick <u>Human Rights Act</u>, the <u>Workplace Harassment Policy</u> from the Administration Manuel System of the New Brunswick government, <u>Policy 322 on Inclusive Education</u> and this policy.
- **6.1.3** The district plan will be reviewed with the DEC prior to implementation and whenever it is revised.

6.2. The School Positive Learning and Working Environment Plan

- **6.2.1** The principal of the school must prepare the school's positive learning and working environment plan. (see 6.1.1) The principal must report annually to the Superintendent on the plan and related strategies implemented by the school in order to create a positive learning and working environment. This information will be made available to the Minister of Education and Early Childhood Development, upon request.
- **6.2.2** The Senior Education Officer in collaboration with the PSSC will approve their schools' plan prior to implementation and every three years thereafter. Principals hold overall responsibility for their school's effectiveness in developing and implementing the plan.



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- **6.2.3** The school's plan will be reviewed with the PSSC prior to implementation and whenever it is revised.
- **6.2.4** The school's plan will reflect the school community's vision for the safe and inclusive learning and working environment it wishes to achieve. It will include the following elements:
 - a school statement on respecting human rights and supporting diversity
 - expectations, roles and responsibilities for staff, students, parents and volunteers;
 - a School Student Code of Conduct that is not inconsistent with the *Provincial Student Code of Conduct* (Appendix D) and the standards established in this policy. The School Student Code of Conduct will be revised, as necessary, at the same time as the school's plan;
 - a continuum of interventions, supports and consequences to be employed when inappropriate behaviour is exhibited by anyone in the school environment;
 - direction for managing behaviours that are more minor in nature but are disruptive because of their frequency. For example, defiance, disrespectful language and gestures, missing school or arriving late. For some students, additional individual interventions will be required. When disruptive behaviour is substantial and persistent, a formal plan of intervention must be put in place; and
 - strategies aimed at preventing and resolving misunderstandings or disagreements between school personnel and parents or visitors to the school.
- **6.2.5** The Department of Education and Early Childhood Development and school districts will provide support to the school's plan through a variety of means, including provision of resource materials and development of provincial and district protocols, where necessary.



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PART 2: INAPPROPRIATE BEHAVIOURS AND MISCONDUCT¹

6.3 Serious Misconduct

- **6.3.1** The following are examples of behaviours exhibited by any person that are viewed as extreme and unacceptable in the New Brunswick public school system:
 - bullying, hazing or any form of intimidation;
 - cyber bullying including, but not limited to, posting inappropriate material online, sending harassing, deliberate or repeated emails and posting items online without permission of those involved;
 - possession, use or provision of weapons a weapon can be any object used, or intended to be used, to cause injury or death, or to threaten or intimidate a person. Discipline decisions will take into account the inherent or perceived danger of the object involved;
 - possession, use or selling of illegal or dangerous substances or objects examples include the use of illegal drugs, tobacco and alcohol, possession of drug paraphernalia and possession of explosives;
 - possession of or sharing pornographic materials (including electronic images);
 - physical violence the use of force or inciting others to use force to cause physical injury;
 - sexual assault, harassment, abuse and misconduct;
 - dissemination of any hate propaganda material, including hate literature;
 - harassment causing a person to fear for their safety or the safety of a
 person known to them by repeatedly following them from place to place or
 repeatedly communicating directly or indirectly (e.g. by leaving notes,
 making or sending persistent or harassing telephone calls or e-mails, etc.);
 - uttering threats communicating the intent to hurt or damage a person, an animal, place or thing;
 - vandalism causing extensive damage to school property and on school property;
 - theft;
 - disruption to school operations any behaviour which threatens the health or safety of any person, including school personnel (e.g. arson, bomb threats and tampering with safety equipment such as fire alarms); and

¹ These lists are not exhaustive. It is left to the discretion of the school or school district officials to determine whether a certain action or behaviour will be considered serious misconduct or behaviour not tolerated in the school system.



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- any other behaviour that, in the opinion of school or school district officials, would reasonably be considered serious misconduct.
- **6.3.2** These behaviours represent a significant disruption to the learning and working environment, endanger others or significantly impair the operation of the school and the maintenance of a positive learning and working environment. These behaviours will normally result in the exclusion of a person from school property and, in the case of a student these behaviours will result in an immediate suspension, in addition to other interventions. In most cases, due to the gravity of these behaviours, their occurrence will require the involvement of law enforcement officers.

6.4 Behaviours Not Tolerated

- **6.4.1** The following behaviours, exhibited by any person, will not be tolerated in the New Brunswick public school system:
 - cheating, plagiarism, forging notes, signatures or excuses;
 - accusations involving falsehood or malicious intent;
 - discrimination on the basis of real or perceived race, colour, religion, national or ethnic origin, ancestry, place of origin, language group, disability, sex, sexual orientation, gender identity, age, social condition or political belief or activity;
 - using disrespectful or inappropriate language or gestures;
 - disorderly conduct;
 - unjustified absenteeism and chronic tardiness;
 - persistent or repetitive disruptive behaviour or chronic minor offences;
 - shoving, pushing or minor physical altercations;
 - loitering;
 - disrespect, insubordination or defiance of authority;
 - failure to comply with school rules or directions;
 - intentional property damage; and
 - any other behaviour that, in the opinion of school or school district officials would reasonably be considered a behaviour not tolerated.
- **6.4.2** These behaviours may not significantly interfere with the operation of a school but do represent a challenge to the positive learning and working environment. These behaviours may escalate into serious misconduct, reflecting the need to address these behaviours consistently and immediately. This means an



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intervention, as agreed upon in the School Positive Learning and Working Environment Plan, is consistently applied when these behaviours occur.

PART 3: PREVENTION OF AND INTERVENTION INTO INAPPRORIATE BEHAVIOURS AND MISCONDUCT

6.5 Prevention

6.5.1 School administrators will ensure that the school plan, rules and the roles and responsibilities of students, parents, teachers, school administration and other school personnel are communicated and understood by members of the school community.

6.6 Intervention in Student Misconduct

- **6.6.1** A student whose conduct poses an immediate threat to the safety of others or him/herself will be subject to immediate risk reducing interventions and, if removed from school property, will be permitted to return when safety can reasonably be assured, following an assessment as per the Violent Threat and Risk Assessment Protocols or relevant procedures.
- **6.6.2** In the case where a student is intoxicated (by means of alcohol, drugs or other substances), parents must be notified and the student shall not be left without appropriate adult supervision until the student is released to his/her parents or other authority.
- **6.6.3** Some students may behave in challenging ways that are beyond the student's control or understanding. For example, these behaviours could simply represent the student's attempt to communicate with others. Where this appears to be the case, such students may not be subject to the typical consequences established by the school. The student's personalized learning plan will provide direction and will be modified if the behaviour continues to be problematic. Certain behaviours may indicate that additional consideration of the behavioural supports provided to the student is required.
- **6.6.4** When it has been determined at a case conference and approved by the Superintendent, that all available interventions (including positive behavioural supports and other accommodations) have been exhausted and that the behaviour-related needs of a student cannot be met in a classroom setting, alternative educational arrangements will be made. Such a case conference will involve: the student, if appropriate, parents, relevant staff and other professionals involved with the provision of service to the student. The goal of any alternate placement will ultimately be to return the student to the classroom as soon as practicable.



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- **6.6.5** Discipline will be corrective, aimed at helping students learn appropriate, self-regulatory, productive behaviours in support of the maintenance of a positive learning and working environment.
- **6.6.6** Superintendents will ensure school personnel are provided with adequate and appropriate training to recognize signs that a student is in difficulty. Early identification increases the likelihood of appropriate intervention or referral. Care must be taken, however, not to stereotype students.
- **6.6.7** School personnel will make parents aware of problems involving their child and will be encouraged to take part in the development of an intervention plan, as appropriate. Parents are responsible for supporting the agreed upon plan of intervention. When parental support is not given, parents must be informed of the constraints this places on the education system in providing service to the child and the consequences for their child's progress and development. In extreme cases, where parental support is not forthcoming, the Superintendent can make a referral to the Department of Social Development. An investigation may follow, as per section 31(2) of the *Family Services Act*.

6.7 Recording and Sharing Student Conduct Information

- **6.7.1** The primary purpose of maintaining student records is to provide support for the learning of the individual student. Decisions regarding the documentation and sharing of student conduct information must be made in this context.
- **6.7.2** Teachers and other staff, such as bus drivers, must keep an accurate, written record of notable incidents of misconduct. The manner in which incidents are handled, subsequent interventions and progress must also be recorded, if known. Staff must keep school administrators informed concerning specific and general discipline issues.
- **6.7.3** Records documenting student conduct must be kept as per record retention schedules and related processes.
- **6.7.4** Relevant information concerning support received by a student shall be provided to any person who works with the student to the extent it is required for effective delivery of this assistance.
- **6.7.5** If it is assessed that a student poses potential risk to him/herself, to others or to school property, the nature of this risk shall be communicated as soon as possible, on a need-to-know basis, to those who work with the student, including bus drivers and to the administration of any school to which the student may transfer.



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6.8 Prevention of and Intervention into Misconduct by a Parent or Visitor

- **6.8.1** The conduct of parents or other visitors that disrupts the learning and working environment is unacceptable and will be acted upon as per the direction in the school's plan and this policy.
- **6.8.2** When misconduct occurs involving a parent or visitor, the informal dispute resolution measures described in <u>Appendix C</u> must be employed. Every reasonable effort shall be made to resolve the issue between the immediate parties directly and as quickly as possible.
- **6.8.3** When misconduct is repetitive, harassing or chronic, contravenes this policy or becomes substantial and persistent, and informal dispute resolution has proven unsuccessful, the formal reporting procedures provided in <u>Appendix C</u> should be followed (only after all other options have been exhausted). Principals must ensure appropriate follow-up.
- **6.8.4** When misconduct by a parent or a visitor poses an immediate threat to the positive learning and working environment, school personnel, the principal or a designate will inform the individual that the conduct is inappropriate and ask the person to stop. If necessary, school personnel can exclude the person from school property.
- **6.8.5** A notice under the <u>*Trespass Act*</u> can also be issued by school administrators should the situation warrant the individual's removal from school grounds for an extended period of time. See <u>Appendix C</u>.
- **6.8.6** Harassment involving personnel in the workplace as defined in the New Brunswick Administration Manual Policy <u>AD-2913 *Workplace Harassment*</u> shall be reported in accordance with that policy.

7.0 GUIDELINES / RECOMMENDATIONS

- **7.1** The PSSC may support efforts to communicate the school plan, rules and the roles and responsibilities of students, parents, teachers, school administration and other school personnel.
- **7.2** Additional topics that could be included in the School Positive Learning and Working Environment Plan are included in <u>Appendix A</u>.
- **7.3** Examples and best practices related to positive discipline are included in <u>Appendix B</u>.
- **7.4** Additional standards for the behaviour of students are included in the Provincial Student Code of Conduct (<u>Appendix D</u>).



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8.0 DISTRICT EDUCATION COUNCIL POLICY-MAKING

A District Education Council may develop policies and procedures that are consistent with, or more comprehensive than, this provincial policy.

9.0 REFERENCES

Related *Education Act* sections:

13(1) In support of the learning success of his or her child and the learning environment at the school, a parent is expected to

[...]

(b) communicate reasonably with school personnel employed at the school his or her child attends as required in the best interests of the child,

[...]

(e)have due care for the conduct of his or her child at school and while on the way to and from school.

13(2) The parent of a pupil has a right to reasonable consultation with the pupil's teacher or the principal of the school the pupil attends with respect to the education of the pupil.

13(3) It is the responsibility of the parent of a pupil and of school personnel to conduct themselves in a respectful manner and to follow established procedures when involved in communications concerning the pupil.

14(1) It is the duty of a pupil to

[...]

(e) contribute to a safe and positive learning environment,

(f) be responsible for his or her conduct at school and while on the way to and from school,

(g) respect the rights of others, and

(h) comply with all school policies.

21(2) Subject to any policies or directives of the District Education Council concerned, every teacher shall

(a)maintain proper order and discipline in or on school property,

(b)maintain proper order and discipline on the part of pupils under the teacher's supervision during school activities off school property, and

(c)have due care for the conduct of pupils while on their way to and from school.



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22(1) Where a person creates or attempts to create a disturbance in or on school property while being used for school purposes, a teacher may exclude that person from the school property.

22(2) Where under subsection (1) a teacher attempts to exclude a person from school property and that person refuses to immediately leave the school property that person commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a category C offence.

22(3) Where a person, in or on school property,

- (a) uses threatening or abusive language, or
- (b) speaks or acts in such a way as to impair the maintenance of order and discipline in or on the school property,

that person commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a category C offence.

24(4) In accordance with the regulations, the parent of a pupil or an independent pupil may, where the pupil is suspended from attendance at school under this section for more than five school days in a school year, appeal the most recent suspension from attendance at school.

Regulation 97-150 School Administration

Sections 39 through 43(7)

Related Department of Education policies:

Policy 311 - Information and Communication Technologies (ICT) Use Policy 322 – Inclusive Education Policy 701 – Policy for the Protection of Pupils Policy 705 – School and School District Crisis Planning

New Brunswick Administration Manual <u>Policy AD-2913</u> – *Workplace Harassment* <u>Criminal Code of Canada</u> <u>Child Victims of Abuse and Neglect Protocols</u> (Government of New Brunswick) *Trespass Act* – sections 2(1) and 2(2)

New Brunswick Human Rights Act

Canadian Charter of Rights and Freedoms

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.



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(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Public Health Agency of Canada, *Questions & Answers: Sexual Orientation in Schools* (Her Majesty the Queen in right of Canada, 2011)

10.0 CONTACTS FOR MORE INFORMATION

Department of Education and Early Childhood Development – Student Services (506) 453-2816

Department of Education and Early Childhood Development – Policy and Planning Division (506) 453-3090

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SUGGESTED TOPICS FOR INCLUSION IN THE SCHOOL POSITIVE LEARNING AND WORKING ENVIRONMENT PLAN

- Strategies for recognizing appropriate behaviour, successes and accomplishments and for monitoring progress.
- Student activities which develop: self-esteem, communication skills, social skills, respect for self and others, self-control, productive behaviour, peaceful and cooperative problem solving, conflict resolution and the practice of democratic principles.
- Methods of including students in decisions affecting them, as a group or individually, and encourage team-work with school personnel and peers.
- Methods of coordinating services received by students.
- Communication plan to ensure the School Positive Learning and Working Environment Plan is understood by students, parents, volunteers, school personnel and other members of the school community and is communicated annually to all involved in the school.
- Steps for monitoring and furthering successes achieved in creating a positive learning environment.
- Strategies to help teachers, school personnel and parents teach appropriate behavior.
- Strategies to help teachers, school personnel and students to address the isolation and exclusion that may be experienced by some students as well as to foster an inclusive and welcoming school environment and culture in which all students feel that they belong.



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POSITIVE DISCIPLINE FOR NEW BRUNSWICK SCHOOLS

- Discipline is intended to promote learning of self-control and to change inappropriate behaviour; expected behaviours must be taught directly and systematically.
- Every reasonable effort will be made to allow all students to continue their learning.
- School personnel have the authority and responsibility for taking appropriate action, within the scope of their prescribed duties, whenever unacceptable behaviour occurs. The focus of intervention should be on assisting students who have been victimized as well as those who need assistance to address inappropriate behaviour.
- Intervention plans put in place when students are experiencing difficulties will reflect a team approach involving parents and students to the fullest degree possible.
- Each situation will be handled according to the strengths and needs of the individual to the extent that it does not interfere with the learning environment of the remaining students in the class. It should be noted that, although rules contained in the School Positive Learning and Working Environment Plan will be consistent, strategies for helping students to understand and respect the rules will vary from student to student.
- Emphasis will be placed on activities which allow students to understand the effects of their behaviour and to make up for misconduct (i.e. "to make it right"). Improved behaviour should be recognized.
- Consequences will be appropriate for the student's stage of development, will make sense to the student as much as possible, will be appropriately timed, will reflect the severity of misconduct and, in the case of repeat or chronic behaviour, will take previous interventions into account.
- Reinstatement of school or bus privileges after suspension will require the student demonstrate that the behavior has been corrected. This may be done in a variety of ways including the use of a verbal or written agreement or the completion of one or more tasks. In some cases, students will be returned when a plan for remediation has been put in place.



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PROCEDURES FOR USE BY SCHOOL PERSONNEL FOR INCIDENTS OF INAPPROPRIATE OR HARASSING BEHAVIOUR BY PARENTS OR OTHER VISITORS

(excluding those under <u>Policy AD-2913</u> – Workplace Harassment)

1. Informal Alternative Dispute Resolution

Most disagreements or misunderstandings can be resolved easily and quickly through a discussion between the parties most immediately involved. The member of the school personnel who has a complaint (hereafter called the "Complainant") and the school principal should work together to develop a plan to intervene in the inappropriate behaviour. This could be discussed before the Complainant engages with the individual responsible for the inappropriate behaviour.

- The Complainant may meet with the individual(s) directly to ensure the situation is understood by each party. The individual(s) should be informed that their actions or comments are unacceptable and unwelcome.
- Discuss the issue using plain language that is not blaming, inflammatory or accusatory.
- Inform the individual(s) of the goal of the discussion and problem-solve together to find a resolution. Both parties should be open to each other's comments and suggestions.
- If the communication between the two parties is oral, the Complainant should have a witness present, if appropriate. If it is in writing, it is advisable for the Complainant to keep a copy and, also, to review the written communication with the principal prior to it being sent.
- If resolution is not achieved through direct discussion of the issue, or if either party is uncomfortable with this approach, the Complainant should involve their school principal.
- It is recommended that the Complainant keep a record of any incidents related to the inappropriate behaviour in order to maintain an account of the timeframe and the specific details of the situation.

If the informal dispute resolution procedures fail to produce the desired outcome, then school personnel should proceed to formal intervention, where it is appropriate to do so.

The formal intervention procedures should only be used when the inappropriate or harassing behaviour is substantial or persistent and when the informal dispute resolution was unsuccessful.

Please see following page...



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2. Formal Dispute Resolution

Where appropriate, the Complainant may choose to file the following formal incident report. If necessary, the Superintendent can recommend that the situation be referred to a mediator.

- A formal incident report must be written and signed by the Complainant and the principal. It must give an accurate account of the incident or incidents of harassment or other inappropriate behaviour including times and dates, places and parties involved. When completed, the report is submitted to the principal, along with any relevant documentation. The principal will inform the superintendent of the situation.
- Upon receiving a formal incident report, the principal will determine whether the incident report is sufficiently complete. The principal will send a letter to the person responsible for the alleged incident to schedule an appointment or to inform the person that their action(s) or comment(s) are unacceptable and will not be tolerated. If necessary, a person may also be banned from the school premises (see *Trespassing Notice* on last page). If further action is required, such as mediation, the principal should contact the Superintendent.
- If the Complainant is threatened, assaulted, or concerned about their safety, the Complainant should contact the local law enforcement officers in addition to notifying school officials.



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FORMAL INCIDENT REPORT FOR USE BY SCHOOL PERSONNEL FOR INCIDENTS OF INAPPROPRIATE OR HARASSING BEHAVIOUR BY PARENTS OR OTHER VISITORS

Name:	
Position:	
School:	
Telephone:	
Email:	

Nature and date of the alleged incident

Has this incident been discussed with the person responsible for the alleged incident? \Box Yes \Box No

If yes, date_____

Name of the individual involved in the alleged incident

Please describe the incident:

Brunswick

DEPARTMENT OF EDUCATION

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Signature	Date_	
Principal's signature		
Superintendent's signature	Date	
Follow-up (including any referrals to mediation):		
Brunswick

DEPARTMENT OF EDUCATION

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Name of School Address

TRESPASS ACT OF NEW BRUNSWICK

Trespassing Notice

TO: _____

TAKE NOTICE that you are at all times henceforth to refrain from remaining on or entering upon the premises known as ______School located at _____

, New Brunswick, which premises include the parking and entrance areas used in connection therewith. This notice is given by an authorized person, under the Provisions of the New Brunswick Trespass Act. (2.1 and 2.2).

This notice expires ______.

FURTHER, understanding that communication with the school is important, it is expected that all communication will be via email ______ or telephone

DATED:_____

Per:_____

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Provincial Student Code of Conduct Guidelines



POLICY 703 - Appendix D

The *Provincial Student Code of Conduct* reflects the values and behaviours that will help New Brunswick schools be positive, caring and safe places to learn and work. The foundation of any Student Code of Conduct is good citizenship. In addition to the Positive Learning and Working Environment Plans developed by each school, the Code will help foster an environment where all students feel welcome, wanted and have a sense of belonging.

Application

All schools are required to have a Student Code of Conduct in place. New Brunswick's public schools should be commended for recognizing early on the importance of establishing and implementing a Student Code of Conduct, as many schools already have one in place.

The purpose of the *Provincial Student Code of Conduct* is not to undermine the efforts of our schools but rather to:

- ✤ Emphasize the importance of having and respecting a Student Code of Conduct;
- Lend provincial support to schools in their efforts to create a safe and positive learning and working environment; and
- Serve as a guideline for schools as they develop and/or review their own Student Code of Conduct.

A Student Code of Conduct applies to all students. This means students at school, on school buses, coming to and from school, at school-sponsored events, whenever a student is representing the school, in all communications related to school events and in all interactions among students and between students and school staff. The Code applies to student behaviour online and in electronic communications (for example, posting pictures and chat room participation) and other instances that could have an impact on the school climate.

Students play a critical role in developing their school's Code of Conduct. They need to be part of the development process in order to facilitate the incorporation of the Code's standards into the school environment. This is why the *Provincial Student Code of Conduct* was developed in consultation with various student groups across New Brunswick.

In addition to having a Code in place for students, it is important that the school promote their Code of Conduct so that all students, parents and school community partners are aware of its standards.





Implementing a Student Code of Conduct – a collective responsibility

All members of the school community have the right to learn and work in a safe, orderly, productive, respectful and harassment-free environment.

All members of the school community are responsible for supporting and modelling the standards established in this Code.

Students are expected to be respectful and engaged in their school community. Nothing is expected of a student that is not also expected of others in the school community. Teachers and school staff, led by the principal, and members of the school community should model good behaviour and the values of the Code in school and wherever students are present (including on the school bus).

As a student,

- ✓ I will follow my school's Student Code of Conduct.
- ✓ I will encourage my friends to respect my school's Student Code of Conduct.
- ✓ I will behave in an acceptable manner when I am a guest or a visitor at other schools.

As a parent,

- ✓ I will teach my children how to behave civilly.
- ✓ I will ensure that my children come to school ready to learn.
- ✓ I will learn the school rules, including the Student Code of Conduct, and reinforce these rules with my children.
- ✓ I will collaborate with the school by supporting the standards of this code and the measures taken by the school to reinforce positive behaviour.
- ✓ I will communicate reasonably with school personnel.
- ✓ I will encourage and demonstrate appropriate behaviours within the school community.

As a teacher,

- ✓ I will teach the Student Code of Conduct.
- ✓ I will encourage responsible behaviour.



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- ✓ I will model appropriate behaviour within the school community.
- ✓ I will maintain order and discipline within my classroom and encourage a positive learning and working environment.
- ✓ I will have clear and appropriate expectations, based on the <u>Education Act</u> and relevant policies, with regard to student behaviour.
- ✓ I will communicate these expectations to students, parents and the school community.

As a school principal,

- ✓ I will ensure that measures are taken to create and maintain a safe, positive and effective learning and working environment, consistent with the <u>Education Act</u> and relevant policies.
- ✓ I will communicate these measures throughout the school community.
- ✓ I will maintain order and discipline at my school and work to cultivate a positive learning and working environment.
- ✓ I will provide leadership at all times, especially when problems arise.

As a member of the school personnel,

- ✓ I will collaborate with other school staff to encourage a safe and positive learning and working environment.
- ✓ I will encourage students to behave responsibly and appropriately.
- ✓ I will participate in the efforts of my school to implement a Student Code of Conduct.

As a member of the school community,

- ✓ I will support my local school in its efforts to create a safe and positive learning and working environment.
- ✓ I will work with my school to promote and support a safe and positive learning and working environment by becoming familiar with school rules.
- ✓ I will cooperate with the school's efforts to implement the Student Code of Conduct.

As a superintendent,

✓ I will support a positive learning and working environment in my school district and its individual schools.



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- ✓ I will encourage all parents and members of the school community to interact positively with teachers and school personnel.
- ✓ I will encourage all partners to become familiar with school rules and the Student Code of Conduct.

As a District Education Council member,

- ✓ I will support the Positive Learning and Working Environment through the development of policy.
- ✓ I will ensure provincial and district policies are implemented effectively.

As the Minister of Education,

- ✓ I will demonstrate and encourage appropriate and responsible behaviour.
- ✓ I will provide provincial leadership for the public school system and provide oversight on all provincial policies, programs and services.
- ✓ I will encourage all students, parents, teachers, principals, and other members of the school community to act in a way that promotes the values of empathy, respect and good citizenship.
- ✓ I will support the implementation of Positive Learning and Working Environment Plans.

Student Code of Conduct – In Context

How will schools use this Student Code of Conduct?

The *Provincial Student Code of Conduct* enhances our continued efforts toward achieving a safe and positive learning and working environment in our schools. It complements the work undertaken by individual schools on their own Student Codes of Conduct. Normally, the Code of Conduct is part of a school's Positive Learning and Working Environment Plan, which outlines standards for appropriate behaviours expected in school and describes how the school will deal with inappropriate behaviours.

In the spirit of sharing best practices, the *Provincial Student Code of Conduct* has been developed based on work done at the school and district level in New Brunswick and research from other jurisdictions. If your school already has a Student Code of Conduct, you should take this opportunity to review your Code to ensure that it is consistent with the *Provincial Student Code of Conduct*. Schools without a student Code of Conduct should use the *Provincial Code* as a starting point for their own Codes.



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Principals are responsible for developing their school's own student Code of Conduct with input from students and the school community. The Code should be based on the standards of behaviour outlined here and be consistent with <u>Policy 703</u>. It should also reflect the school's unique characteristics and local circumstances. Each school should review its Code of Conduct on a regular basis to ensure its continued relevancy and effectiveness. The review process should seek input from the school community. Finally, each school should take steps to promote and communicate its Code of Conduct to all students, parents, teachers, and members of the school community.

What can your school do to encourage appropriate behaviour?

By ensuring an atmosphere of collaboration, of support and belonging, teachers, administrators and members of the school personnel promote an environment where everyone will choose behaviours that are appropriate.

Appropriate behaviours must be nurtured, encouraged and applauded. The celebration of successes reinforces the positive behaviours demonstrated by students. However, in order for the Student Code of Conduct to be well understood by students, it must be taught and communicated. Teachers, with the leadership of the principal and the support of all the members of the school community, must promote the values of the Code, give concrete examples of the behaviours expected in school and clearly communicate the interventions and consequences to students.

What can your school do to address inappropriate behaviour?

The *Provincial Student Code of Conduct*, as an appendix to <u>Policy 703</u>, outlines the behaviours we would like to see exemplified in schools. The policy defines behaviour that is not acceptable in New Brunswick schools and sets out standards of behaviour for partners in the school community, including students, in order to create and maintain a positive environment.

Managing behaviours

Most of the time, inappropriate behaviour will be minor in nature, but, in some instances, will take place on a recurring basis. A number of these minor issues may be lessened through communication and cooperation with the student, and the student's parents, when appropriate.

When the disruptive behaviour is substantial and persistent, a review of the behaviour should take place to assist with the development of a plan of intervention. The cooperation of parents is essential in ensuring the intervention is effective. Students whose parents are involved in their school life and in resolving discipline issues are more likely to be successful at overcoming those issues.



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Some students with exceptionalities may behave in challenging ways that are beyond the student's control or understanding. These behaviours could simply represent the student's attempt to communicate with others. Where this appears to be the case, such students may not be subject to the typical consequences established by the school. Referring to the student's individual education plan will provide direction. The behaviour may indicate that additional consideration of the supports provided to the student is required. However, inappropriate behaviour exhibited by students with exceptionalities, which is clearly not related to the exceptionality, is subject to the routine interventions or consequences.

Teachers administrators and are generally well trained in responding to behavioural issues through a range of positive used to teach strategies behaviours and prevent and manage disruptive behaviours. Appropriate, predetermined consequences and interventions must be put in place at the school level to address non-compliance. Consequences and interventions should be identified through staff, student and parent input into the Positive Learning and Working Environment Plan.

Appropriate consequences should:

- be age-appropriate;
- reflect the severity and frequency of the misbehaviour;
- contain educational value;
- be mindful of the student's age, developmental stage and any exceptionalities, and
- be logical in relation to the behaviour.

When inappropriate behaviour occurs, the consequences, interventions and re-entry plan for the student into the classroom should be determined in collaboration with the student in question, the teacher and relevant school personnel, where appropriate, in relation to the specific situation at hand.

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The following are some examples of consequences or interventions:

- Verbal warning
- Behaviour contract
- Conference with student and parent/guardian
- Withdrawal of privileges
- Restitution/Restorative justice
- Reflection sheet
- Letter of apology

- Confiscation of prohibited material
- Detention/Period of reflection
- Service learning (requiring a student to spend time performing duties at school)
- Suspension in accordance with the Education Act¹
- Restriction of ICT privileges

Educators use their discretion and professional judgement when intervening to correct inappropriate behaviour.

The following disciplinary measures are unacceptable:

- corporal punishment
- ridicule/sarcasm
- misuse of collective punishment
- assignment of additional academic work (that is not expected of other students, with the specific aim of punishing the student in question)

¹ Where a student has been suspended in accordance with the *Education Act*, a parent may appeal this suspension. See sections 39 through 43(7) of <u>Regulation 97-150</u>.



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Are there other provincial policies related to acceptable behaviour within the school community?

Policy 701 Policy for the Protection of Pupils sets out standards of behaviour for teachers and other adults in the school system, to ensure that students are protected from non-professional conduct by adults.

Policy 311 Information and Communication Technologies (ICT) Use defines standards

for the appropriate use of ICT in the school system (including cyberbullying).

For a copy of these policies and others, please visit

http://www.gnb.ca/0000/policies.asp

The *Provincial Student Code of Conduct* is supported by the *Education Act* and its

Regulations. It has been developed with respect to the New Brunswick Human Rights Commission's <u>Guideline on Accommodating Students with a Disability</u>.



Subject:	Health Support Services
Effective:	September 7, 1999
Revised:	October 1, 2004; December 1, 2008

1.0 PURPOSE

This policy defines standards and procedures required for the provision of health support services to students while they are the responsibility of the public education system, recognizing this responsibility is shared among parents, the public education system and health care providers.

This policy applies to all schools in the public school system.

3.0 DEFINITIONS

Anaphylaxis (Anaphylactic shock) is a severe allergic reaction that can involve several body systems and lead to death if left untreated. Anaphylaxis can result from reactions to foods, insect stings, medications, latex and other substances. The most common food triggers of anaphylaxis are peanut, tree nuts, shellfish, fish, milk, egg, wheat, soy and sesame. However, a wide variety of other foods and exercise have been known to trigger anaphylaxis. Trace amounts of an allergen can trigger a severe reaction.

Emergency services are those provided to a student whose condition requires immediate care to intervene in a potentially life-threatening situation. Emergency services may require specific training and are generally provided according to a pre-established plan.

EpiPen[®] (epinephrine) is a disposable spring-loaded syringe with a concealed needle that contains the drug epinephrine. (EpiPen[®] junior is for children who weigh between 33 and 66 pounds. EpiPen[®] regular is for children who weigh 66 pounds or more.)

Essential routine services are those which need to be provided on a regular basis as part of a daily routine such as, catheterization, special hygiene procedures, ongoing administration of medication such as Ritalin or Dexedrine, or ongoing observation of a student with certain health conditions, such as diabetes, to determine when intervention is needed. Services of this kind require specific training for staff and a plan to ensure appropriate delivery.

Health support services means services without which a student would be unable to attend school, that would normally be provided at home by a family member, and that cannot be deferred until after school hours. This includes medication services, essential routine services and emergency services.

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MINISTER



Medication services includes administration of non-prescription medication such as cough syrup, eye drops or pain reliever, and medication prescribed by a physician such as an antibiotic, or an inhalant. Services in this category are temporary and require no training to deliver. In cases where the administration of medication is needed on a longer-term basis and requires training or is related to a condition that requires a management plan, this will be considered to be an **essential routine service**.

School personnel, as defined in the <u>Education Act</u>, includes: superintendents, directors of education and other administrative and supervisory personnel; school bus drivers; building maintenance personnel including custodians; secretaries and clerks; teachers; persons other than teachers engaged to assist in the delivery of programs and services to students; and other persons engaged in support areas such as social services, health services, psychology and guidance.

4.0 LEGAL AUTHORITY

Education Act, sections

6 The Minister ...

- (a) shall establish educational goals and standards and service goals and standards ...
- (b) may prescribe or approve
 - (i) instructional organization, programs, services and courses, including special education programs and services, and evaluation procedures for such instructional organization, programs, services and courses, including special education programs and services,
 - (ii) pilot, experimental and summer programs, services and courses, including special education programs and services ...
- (b.2) may establish provincial policies and guidelines related to public education within the scope of this Act ...

12(4) Where an exceptional pupil is not able to receive a special education program or service in a school due to

- (a) fragile health, hospitalization or convalescence, or
- (b) a condition or need which requires a level of care that cannot be provided effectively in a school setting,

the superintendent concerned may deliver the program or service in the pupil's home or other alternative setting.

13(1) In support of the learning success of his or her child and the learning environment at the school, a parent is expected to ...

(d) ensure the basic needs of his or her child are met.

27(1) The duties of a teacher employed in a school include ...(e) attending to the health and well-being of each pupil.

28(2) The duties of a principal include ...

(c) ensuring that reasonable steps are taken to create and maintain a safe, positive and effective learning environment.

5.0 GOALS / PRINCIPLES

- **5.1** The <u>Education Act</u> ensures that all school-aged children have access to free school privileges. School-aged children should be provided with such essential health support services as are required during school hours and can be delivered in the school environment.
- **5.2** The provision of health support services is the ongoing responsibility of the parent. Consequently, in requesting the assistance of school personnel in the provision of these services, parents are temporarily delegating limited authority to the personnel of the public education system, for a particular purpose, rather than relinquishing any part of their parental responsibility.
- **5.3** School personnel and others entrusted with the supervision of students have a common law duty of care to assist students during medical emergencies, to the extent that is reasonable for persons without medical training.

6.0 REQUIREMENTS / STANDARDS

6.1 General

Responsibilities of Parent	Responsibilities of Superintendent/ Principal
Parents whose children require health	
support services shall:	Student Data Collection Form
	The superintendent shall ensure the medical
Minimize school involvement	information section of the Student Data
(a) take all reasonable measures to meet the	Collection Form template (Appendix A), is
health/medical needs of their child outside	included in student registration forms
of school hours. When this is not	developed by schools and sent to parents at
possible, parents shall make every effort	the beginning of each school year.
to cooperate with and minimize the	
involvement of school personnel in the	Medications
delivery of health support services;	No medications, over-the-counter or
	otherwise, shall be administered by school
Inform in writing	personnel without a written request signed by
(b) inform the school in writing of any health	a parent.
condition that has the potential to require	
action by school personnel and to ensure	No teacher shall be required to administer
the school is provided with any new,	routine injections as part of his/her regular
relevant information in writing. This	duties.

POLICY 704

Responsibilities of Parent	Responsibilities of Superintendent/ Principal
 includes changes in symptoms, medication or management of the condition; Complete forms (c) return to the school any form required under this policy, accurately completed and signed; Contact (d) ensure the parent, or another person authorized to act on the parent's behalf, can be reached to provide direction and/or can pick up the student should, in the opinion of school personnel, the student's condition require this; Provide materials (e) provide any materials required to meet the health needs of their child; and Costs (f) cover any costs incurred by the school associated with medical treatment including the cost of transportation by ambulance should this be required. 	Principal Notwithstanding this, school personnel shall provide assistance in the case of medical emergencies, to the extent of their capability and the means available to them. Plans and forms Parents whose children require essential routine services or planning for emergency services shall be provided with a copy of this policy and the applicable forms.

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6.2 Medication Services

Responsibilities of ParentResponsibilities of Superintendem PrincipalParents requesting school personnel to administer medication or supervise the child's self-administering of medication shall:The principal shall ensure:Inform in writing (a) make their request in writing, including:The principal shall ensure:1. an explanation of the student's condition;Complete Medication Log (a) the Medication Log (Appendix B) completed and the parent's writter request is attached;1. an explanation of the student's condition;Maintenance of Medication Log (b) once the requested service is co the Medication Log (Appendix B) placed in the student's file; and placed in the student's file; and safe storing of medications, resp the particular storage requirement medication.3. instructions that indicate clearly: i. the name of the medication, ii. dosage, iii. timing/frequency (when or how often, e.g., please give 1 teaspoon cough syrup at 11:30, or remind child to use inhalant pumpResponsibilities of Superintendem Principal
 administer medication or supervise the child's self-administering of medication shall: Inform in writing (a) make their request in writing, including: 1. an explanation of the student's condition; 2. the care requested (i.e. administering, assisting, supervising or reminding only); and 3. instructions that indicate clearly: i. the name of the medication, ii. dosage, iii. timing/frequency (when or how often, e.g., please give 1 teaspoon cough syrup at 11:30, or Complete Medication Log (a) the Medication Log (Appendix B) completed and the parent's writter request is attached;
 around 2:00). If no time is indicated, specify how the school will know when to administer the medication, iv. method of administration (e.g. to be taken with food or on an empty stomach), and v. for prescription medications, the doctor's name and phone number, and any significant side- effects of which school personnel should be aware; Provide medication (b) provide a sufficient supply of medication in its original container, identified with the student's name. Parents must provide "bubble packs/blister packs" and other packaging that will assist schools to provide the correct dosage and prevent sharing of medication; Verify expiration
(c) verify the expiration date of medication;

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Responsibilities of Parent	Responsibilities of Superintendent/ Principal
 Safe transport and disposal (d) take appropriate measures to ensure safe transportation of the medication and assume responsibility for disposal of items requiring special precautions such as syringes, sharps and expired EpiPens[®]; 	
 Essential Routine Services and Emergency Plan Form (e) when students require long-term medication to manage a medical condition, parents shall complete the Essential Routine Services and Emergency Plan Form (Appendix C) to ensure school personnel have all the necessary information; and 	
Inform school(f) parents shall inform the school whenever their child is bringing medication to school.	

6.3 Essential Routine Services

Responsibilities of Parent	Responsibilities of Superintendent/ Principal
Parents whose children require essential routine services shall:	The principal shall ensure:
Make a plan (a) meet with staff designated by the principal, prior to the beginning of each school year, or as soon as possible, to develop/update a written agreement on the service to be provided and the parent's and school's respective roles (and the student's when appropriate). This information is to be recorded on the <i>Essential Routine Services and</i> <i>Emergency Plan Form</i> (Appendix C) and signed by the parent, the principal, the student if 16 years old or older, and an appropriate health care professional;	 Make a plan (a) the parent is provided an opportunity to meet with designated staff, prior to the beginning of each school year as soon as possible to develop/update a written agreement on the service to be provided and the parent's, school's and student's (when appropriate) respective roles. The <i>Essential Routine Services and Emergency Plan Form</i> (Appendix C) is to be completed and signed by the parent, the principal, the student if 16 years old or older, and an appropriate health care professional;
 Essential Routine Services and Emergency Plan Form (b) if more than one service is required, complete Part II of the Essential Routine Services and Emergency Plan Form (Appendix C) separately for each service; 	Note: Although the Essential Routine Services and Emergency Plan Form (Appendix C) must be reviewed with parents annually, the health care professional's signature is only required initially, and if the requirements of the service requested have changed.
 Attend training (c) cooperate with the school to meet the school's training needs and attend the training provided for designated school personnel; and Provide supplies (d) provide all necessary supplies, equipment and appropriately labelled medication, ensuring these are available at all times. 	 Provide training (b) sufficient training is provided at the beginning of the school year to all persons who require it (e.g., bus drivers), as appropriate to the particular health condition and services to be provided. Training shall also be provided during the school year, as needed, to any person who will have responsibility for the care of the student. Efforts shall be made to include the parents in the training.
Note: when a student requires ongoing medication, this is considered an essential routine service. See 6.2 for instructions concerning medications.	Note: when a student requires ongoing medication, this is considered an essential routine service. The <i>Medication Log</i> form (<u>Appendix B</u>) must be completed whenever medication is administered.



6.4 Emergency Services

6.4 Emergency Services		
Responsibilities of Parent	Responsibilities of Superintendent/ Principal	
Note: Parents should be aware that, in some areas of the province EpiPens [®] (epinephrine) are not available on ambulances. Depending on where the school is located, a child may require 3 or more EpiPens [®] to get to the nearest hospital;	of the Essential Routine Services and Emergency Plan Form (<u>Appendix C</u>) of individual students, are put in place.	
 Medication management (c) if the medication needs to be on the student's person, ensure it is appropriately contained and managed; 		
 Provide medical ID (d) ensure the student wears a Medic Alert[®] bracelet or other suitable identification at all times; 		
Attend training (e) attend the training provided for designated school personnel, so that the parent will be fully aware of the particular		

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Responsibilities of Parent	Responsibilities of Superintendent/ Principal
procedures being put into place; and	
Complete forms (f) in the case of life-threatening allergies, complete the <i>Extreme Allergy</i> <i>Management and Emergency Plan Form</i> (Appendix D) rather than the <i>Essential</i> <i>Routine Services and Emergency Plan</i> <i>Form.</i>	

6.5 Liability Protection

The Province of New Brunswick will indemnify and defend employees, members of the Parent School Support Committees and the District Education Councils, volunteers, and student teachers, in accordance with the principles and processes identified in Policy AD-3108 – <u>Personal Liability Protection</u> – New Brunswick Administration Manual.

6.6 Specific Health Conditions

Note: This section contains additional requirements specific to certain health conditions. These are to be followed in the context of the previous sections of this policy.

6.6.1 Life-Threatening Allergies – Risk of Anaphylactic Reaction

Responsibilities of Parent	Responsibilities of Superintendent/ Principal
Parents shall familiarize themselves with all sections of this policy and shall meet their	The principal shall ensure:
responsibilities as set out in this policy, as	Provide policy and forms
applicable.	 (a) parents are provided with a copy of this policy and the applicable forms;
	Make a plan
	 (b) the parent, and student when appropriate, are provided with an opportunity to meet with designated staff, prior to the beginning of each school year or as soon as possible to develop/update the <i>Extreme Allergy Management and Emergency Plan</i> (Appendix D). This shall include a written agreement on the procedure to be followed in the event of a medical emergency, describing the parent's, school's and student's (when

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Responsibilities of Parent	Responsibilities of Superintendent/ Principal
	appropriate) respective roles. The Extreme Allergy Management and Emergency Plan (<u>Appendix D</u>) is to be signed by the parent, the principal, the student if 16 years old or older, and the student's physician;
	Note: Although the <i>Extreme Allergy</i> <i>Management and Emergency Plan Form</i> (Appendix D) must be reviewed with parents annually, the physician's signature is only required initially, and if the requirements of the service requested have changed.
	 Provide training (c) a training session on anaphylactic shock is held at the beginning of each school year. Efforts shall be made to include the parents in the training. The Allergy/ Asthma Information Association (AAIA) Anaphylaxis Reference Kit must be used for the training and the session must cover EpiPen[®] administration and the emergency plan to be put in place. Training must be delivered to all staff, including the principal, teachers, school day care personnel, bus drivers, custodians, lunchroom supervisors, resource staff, and any casual employees, including substitute teachers present in the school at the time of the training session;
	 Casual employees (d) measures are in place to help ensure student safety when the student is under the supervision of an untrained casual employee, including a substitute teacher.
	Casual employees shall be provided with written instructions concerning the care of the student.
	Where appropriate, a trained member of the school personnel who will be able to intervene rapidly in the case of

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Responsibilities of Parent	Responsibilities of Superintendent/ Principal
	anaphylactic shock will be designated to assist;
	 Medication management (e) that the medication, such as an EpiPen[®], is stored and handled according to the student's <i>Extreme Allergy Management and Emergency Plan Form</i> (Appendix D);
	Limit allergens (f) in a school attended by a student with a life-threatening allergy, work towards creating:
	when it is possible to restrict the identified allergen (e.g. peanuts, nuts, fish and shellfish)
	 i. school buildings and school vehicles which are free of the substance(s) identified as placing the allergic student at risk of anaphylactic shock; ii. school practices that reduce the possibility of exposure to the substance(s) identified as causing anaphylactic shock, including desisting from using food containing the allergen for fundraising and for class projects and implementing special precautions when the student attends special events or field trips.
	where the allergen is such that it CANNOT be restricted from being brought to school (e.g. milk and egg products)
	 i. classrooms used by the student(s) which are free of the substance(s) identified as placing the allergic student at risk of anaphylactic shock; ii. school practices that reduce the possibility of exposure to the substance(s) identified as causing
	anaphylactic shock; iii. a specific area within the cafeteria (or

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Responsibilities of Parent	Responsibilities of Superintendent/ Principal		
	Iunchroom) designated as allergen- free that is treated according to AAIA standards; and iv. special precautions on school vehicles and when the student attends special events or field trips and when food or other potential allergens are brought into the school or used for fund-raising or class projects.		
	Letter to parents (g) a letter is sent annually to parents of all students in the school, advising them of health concerns and requesting co- operation (<u>Appendix E-1</u> for products which it is possible to restrict such as peanuts, nuts, fish and shellfish; <u>Appendix E-2</u> for products which may be admitted to certain areas of the school such as milk and egg products);		
	Communicate (h) that all concerned are informed and respect the established preventive measures at all times, understanding that it is not possible to ensure a 100% allergen-free environment.		

7.0 Guidelines / Recommendations

7.1 Parent Non-Compliance

- **7.1.1** <u>Lack of Precautions for Own Child</u>: In cases where the parent, despite notification, does not
 - a. provide care, medication or other items required for the health and safety of his/her child (e.g. an EpiPen[®]),
 - b. participate in developing an individual care plan with the school as necessary for the health and safety of the child,
 - c. complete required forms, or
 - d. provide up-to-date contact information

the principal is advised to send a letter to the parent:

- notifying the parent that his/her actions may be placing the security or development of the student at risk, according to subsection 31(1) of the <u>Family Services Act</u>; and/or requesting the parent to sign-off on any plan the school has developed to care for the student, and/or
- requesting the parent to sign an acknowledgement that his/her lack of compliance may impede the school's ability to adequately care for the student (*Parent Letter – Non-Compliance*, <u>Appendix E-3</u>).
- **7.1.2** <u>Lack of Precautions for Allergic Child</u>: In cases where an allergen is introduced into an area where it is prohibited, the principal should:
 - ensure appropriate measures are in place to remove/restrict the substance and see to the security of the allergic student;
 - remind those responsible of the precautions to be taken regarding the allergen;
 - when a student brings the specified allergen into an area where it is prohibited, remind the student of the rules about the allergen;
 - if the incident is repeated, remind the student and the student's parent, in writing, of the great risk to the allergic student and the precautions to be taken regarding the allergen;
 - at a subsequent occurrence, send a letter informing the parent that, due to the seriousness of the risk, the school is obliged to remove the allergen or restrict its use to a particular location, as the case may be, in order to protect the life of a student;
 - continued failure to take precautions regarding an allergen should be treated in the same way as any other behaviour that threatens the life of a student.
- **7.1.3** In cases where a parent of a child requiring service has an objection to a specific requirement stated in this policy or deemed necessary by the principal for the security of a student, the parent should be requested to sign the *Request for Variance of Procedure Form* (Appendix F).

8.0 DISTRICT EDUCATION COUNCIL POLICY-MAKING

District Education Councils may establish policy, within the parameters of this policy and the *Education Act*.

9.0 **REFERENCES**

- Appendix A <u>Student Data Collection Form</u>
- Appendix B <u>Medication Log Form</u>
- Appendix C <u>Essential Routine Services and Emergency Plan Form</u>
- Appendix D Extreme Allergy Management and Emergency Plan Form
- Appendix E-1, E-2 & E-3 Parent Letters
- Appendix F <u>Request for Variance of Procedure Form</u>

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Policy 214 - Indemnification of Employees, District Education Council Members, Parent School Support Committee members, Volunteers and Student Teachers

Policy AD-3108 – <u>Personal Liability Protection</u> – New Brunswick Administration Manual

Canadian School Boards Association, <u>Anaphylaxis: A Handbook for School Boards</u>, September 2001.

Allergy/Asthma Information Association Anaphylaxis Reference Kit

10.0 CONTACTS FOR MORE INFORMATION

Student Services – (506) 453-2155 Policy and Planning – (506) 453-3090

ORIGINAL SIGNED BY

MINISTER



APPENDIX B

Use this form to record the administering of <u>all</u> medications.

MEDICATION LOG FORM

To be completed by the designated school personnel administering the medication or supervising the student's self-medication. Attach parent's instructions and signed request to the back of this form. Place in student's file when completed.

Name of Student:	Teacher:	

Date of Birth:

Homeroom: _____

Storage and safekeeping instructions:

Please record at time the medication is taken:

Date	Time	Name of Medication	Dosage	Comment (if any)	Initials

Note any unanticipated reactions/results related to the administering of the medication:



Section 3

Part C: Guidelines





Ensuring Student and Staff Safety: Guidelines for Restraint and Seclusion Procedures in Schools

Department of Education and Early Childhood Development October 2017

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Introduction

The Department of Education and Early Childhood Development (EECD) is committed to ensuring a safe and positive learning environment of all students and school personnel. The purpose of these guidelines is to ensure that all students and staff are safe in school, and that students who may have a behaviour crisis are free from inappropriate use of physical restraint or seclusion. They are applicable to all New Brunswick public schools.

School personnel have a responsibility to adopt and implement evidenced-based practices designed to teach prosocial behaviours for students' with behavioural challenges. Students engage in violent behaviour when they are lacking skills to meet and communicate their needs in more appropriate ways. Similar to academic learning, students can learn new social, communication, and adaptive skills when high quality instruction and evidence-based practices are implemented.

EECD supports Positive Behavioural Interventions and Supports (PBIS), and other evidencebased programs and services that motivate, teach and support positive behaviour to create a positive learning environment.

Goals and Principles

These guidelines are consistent with, and are to be applied within the framework of *Policy 703 – Positive Learning and Working Environment* and *Policy 322 – Inclusive Education*.

- Good citizenship and civility are modeled and reinforced throughout the school community. Every person is valued and treated with respect.
- School personnel and students in the public school system have the right to work and to learn in a safe, orderly, productive, respectful and harassment-free environment.
- Inclusive educational practices are supported and promoted. Students are responsible for their behaviour in accordance with their age and stage of development, and to the extent to which their behaviour is voluntary. When disruptive behaviour is attributable to the student's exceptionality and he or she is unable to control this behaviour, appropriate interventions will be employed with the needs of the student in mind.
- Students have a sense of belonging and connection, feel they are supported by school personnel, and have a positive relationship with at least one adult in the school system.
- Parents, school personnel, district staff and the school community understand that social skills, self-discipline, empathy, compassion and ethics are learned throughout life. Each partner in education plays a role in transmitting these values through instruction and by example.

(Policy 703; Section 5.0)

To be prepared to respond to student behaviour that poses imminent danger of physical harm to self or others, the principal must:

- Ensure that a School Positive Learning and Working Environment plan, as per section 6.2 of *Policy 703 Positive Learning and Working Environment*, is in place to effectively manage any behaviour crisis within the learning environment so that students are removed from the school only when all other options have been exhausted.
- Establish practices that create a welcoming and supportive learning environment and promote, recognize and reinforce appropriate student behaviour.
- Implement evidence-based practices designed to teach pro-social behaviours for students with behavioural challenges.
- Ensure time-out procedures are in compliance with *Policy 703 Positive Learning and Working Environment*, and any specific guidelines issued by EECD.
- Ensure any removal from the common learning environment is temporary.
- Ensure any removal from the common learning environment is never used as a punishment. School protocols and personalized learning plans must have measures in place to guard against the effect of humiliating or intimidating the student.

- Follow guidelines and standards of practice about emergency physical intervention and supervised de-escalation, including requirements for documentation and reporting, as per relevant departmental policy.
- Ensure that emergency physical intervention and/or supervised de-escalation are only used as a last resort in an emergency situation, when doing so does not endanger the student, and where continuous monitoring is provided.

(Policy 322; Section 6.5)
What is Restraint?

Used in response to serious problem behaviour that places the student or others at risk of injury or harm, restraints are measures used to control an individual's physical activity to prevent injury or harm.

More specifically, *physical restraint* involves direct physical contact by one or more persons to prevent or significantly restrict another person's freedom of movement, physical activity, or normal access to their body.

For the purposes of these guidelines, physical restraint does **not** refer to:

- taking away a weapon (such as a knife or gun);
- breaking up a fight;
- physical guidance and prompts provided in the course of instruction of minimal intensity and duration, and/or in the context of interventions described in a Personalized Learning Plan – Individual Behaviour Support Plan (PLP-IBSP) based on a functional behaviour assessment;
- physically blocking a student from injuring himself or others;
- holding a student for a brief time in order to prevent an impulsive behaviour that threatens the student's immediate safety (e.g., running in front of a car);
- guiding the physical movement of a student to ensure safety, such as holding a student's hand or arm to cross a street.

Physical restraint is not an instructional tool for teaching appropriate behaviour in the classroom or school. Rather, it is a method to prevent students from harming themselves or others. It should only be used in emergency situations when an imminent (likely to happen within a matter of seconds) and significant threat to the physical safety of the student and/or others exists.

What are the circumstances when physical restraint might be used?

Physical restraint should only be used when a student is displaying physically violent behaviour that presents substantial, imminent risk of injury to the student or others.

The following conditions should be respected:

- 1. Less restrictive methods of de-escalating the situation have been attempted without success.
- 2. Physical restraint should last only as long as is necessary for the student to regain behavioural stability, and the risk of injury has ended, usually a matter of minutes.
- 3. The degree of physical restriction employed should be sensitive and proportionate to the severity of the behaviour, the chronological and developmental age, physical size and condition of the student, and the potential risk of injury to the student.

4. Physical restraint should only be used by school personnel who are qualified/credentialed in EECD approved certification in the use of physical restraint procedures. The credentialing should be deemed up-to-date by district standards. In clearly unavoidable emergency circumstances when fully trained school personnel are not immediately available, an untrained staff member or whose certification has expired may need to intervene to ensure student safety. The untrained staff as soon as possible. Note: School personnel who have received training not associated with their employment with the school district (e.g., former law enforcement officers) should be trained in the EECD approved crisis intervention training and should not apply techniques or procedures acquired elsewhere.

"School personnel have the authority and responsibility for taking appropriate action, within the scope of their prescribed duties, whenever unacceptable behaviour occurs. The focus of intervention should be on assisting students who have been victimized as well as those who need assistance to address inappropriate behaviour." (Policy 703, Appendix B)

- 5. Physical restraint of a student should be conducted in a manner consistent with the techniques prescribed in the provincially approved crisis intervention training programs.
- 6. In the event that frequent violent behaviour is experienced, a PLP-IBSP is required. When school personnel have observed the student engage in a pattern of violent behaviours that is dangerous to the point of causing injury to self or others, members of the Education Support Services Team will conduct a **functional behaviour assessment** and develop a PLP-IBSP including a plan for teaching replacement behaviours. The plan will be developed in collaboration with the parent or guardian. The intervention plan should be documented and the effect of intervention should be closely monitored to determine its effectiveness and altered if the data does not indicate progress. When physical restraint and seclusion is frequently.

Functional Behaviour Assessment (FBA) is the ongoing process of gathering information that can be used to hypothesize about the relations between environmental events and student behaviour. The information is used to inform an intervention plans for the learner.

progress. When physical restraint and seclusion is frequently used as a response to violent behaviour, the ESS Team should consult with individuals with expertise in behavioural interventions such as: a child and youth team member, a psychologist, Education Support Teacher-Autism, or a teacher who is being supervised to obtain certification as a Board Certified Behaviour Analyst (BCBA), or is certified as a Board Certified Behaviour Analyst.

7. Emergency Floor Procedure is an advanced procedure taught by a CPI Applied Physical Training Certified Instructor that has the intent to ensure an individual's safety if he/she goes down to the floor him/herself and there is a threat to the safety of the individual or others when he/she is on the ground. A student is never taken down to the floor.

Emergency floor procedure should only be taught:

- by an NVCI Applied Physical Training Certified Instructor who monitors its use (i.e. reviews frequency of use of procedures, conducts observations and engages in discussions with team to ensure the procedure is carried out appropriately);
- when the staff members involved have already completed basic Nonviolent Crisis

Intervention (NVCI) training and have demonstrated an increased skill level in carrying out NVCI techniques in the context of training and in real life situations, as assessed by the Applied Physical Training Certified Instructor;

- to the team where there is an identified need because the student repeatedly brings him/herself to the ground and poses a danger to self or others;
- when documented in the student's PLP-IBSP.

When should physical restraint procedures not be employed?

Physical restraint should not be used:

- as a response to verbal threats or verbally aggressive behaviour. This does not itself indicate a substantial risk of injury, and should not result in restraint;
- as a response to property damage unless the associated actions are creating a risk of injury to the student or others;
- when the known medical, physical or psychological condition of the student would make the restraint procedures dangerous for that student (e.g. students with heart or circulatory conditions, etc.). In these situations, alternative strategies should be planned in collaboration with the parent and in consultation with a medical specialist;
- as a punishment, or to force compliance with staff commands.

Other Restraint Procedures:

Mechanical restraints should not be used. Mechanical Restraint is the use of any device or object (e.g., tape, ropes, straps, weights, weighted blankets) to limit an individual's movement to prevent or manage out-of-control behaviour. For the purposes of these guidelines, the definition of mechanical restraint does not include:

- adaptive and medically prescribed devices whose purpose it is to compensate for orthopedic weaknesses, to protect from falling or to permit the student to participate in activities at school, when recommended by an occupational therapist, physiotherapist, or physician;
- personal protective equipment (e.g., protective clothing such as gloves, helmets, other garments or equipment) designed to protect the individual's body from injury. However, in all cases, their use should be carefully considered with consultation from appropriate multidisciplinary professionals;
- vehicle restraints (e.g., seatbelts, safety harnesses) to ensure student safety during transportation.

Chemical Restraint, use of medications to control behaviour, should only be used when prescribed and monitored by a medical professional (i.e. a member of the College of Physicians & Surgeons of New Brunswick).

What is Seclusion?

Seclusion involves placing an individual alone in a room or area from which the individual is physically prevented from leaving.

Seclusion may involve the use of a Time-out Room (or other name), which is a room specifically designed for exclusionary time-out or seclusion or primarily used for those purposes.

What are the circumstances when seclusion might be used?

Seclusion should only be used if a student is engaging in intense violent behaviour that presents substantial risk to the student or others and the risk can be diminished by placing the student in a safe environment away from others.

Exclusionary time-out is a procedure in which the student is removed from the setting for a period of time immediately following a challenging behaviour and the goal is to decrease in that behaviour in the future. This procedure should always be used in combination with other proactive and teaching strategies as part of a student's Personalized Learning Plan – Individual Behaviour Support Plan (PLP-IBSP) with signed parent consent.

The following conditions should be respected:

- 1. Less restrictive methods of de-escalating a dangerous situation have been attempted without success.
- 2. Seclusion should be discontinued when the student no longer poses an immediate threat to others.
- 3. Seclusion should be used only when the student can safely be transported to the seclusion environment by trained staff members using appropriate techniques based on crisis intervention training.
- 4. Seclusion may not be used by staff members unless they have received specific Department of EECD approved crisis intervention training in physical restraint procedures.
- 5. In the event that frequent violent behaviour is experienced, a PLP-IBSP is required. When school personnel have observed the student engage in a pattern of violent behaviours that is dangerous to the point of causing injury to self or others, members of the Education Support Services Team will conduct a **functional behaviour assessment** and develop a PLP-IBSP including a plan for teaching replacement behaviours. The plan will be developed in collaboration with the parent or guardian. The intervention plan should be documented and the effect of intervention should be monitored and reported on a regular basis. The plan should be closely monitored to determine its effectiveness and altered if the data does not indicate progress. When physical restraint and seclusion is frequently used as a response to violent behaviour, the ESS Team should consult with individuals with expertise in behavioural interventions such as: a psychologist, Education Support Teacher Autism, or a

teacher who is being supervised to obtain certification as a Board Certified Behaviour Analyst (BCBA), or is certified as a Board Certified Behaviour Analyst.

- 6. The Superintendent or designate will ensure all seclusion environments, including Time-Out rooms, should meet the norms identified in the *Planning Guidelines for Educational Facilities* and be inspected annually for adherence to Fire Marshall standards and regulations. Seclusion environments:
 - o have adequate lighting and ventilation including heat as appropriate;
 - be free of any potential or predictable safety hazards such as sharp corners, light switches, exposed electrical outlets or wiring, equipment, and breakable glass;
 - permit direct continuous visual and auditory monitoring of the student and with a means for the student to see the adult;
 - o not be locked;
 - o be part of school emergency evacuation procedure protocols.
- Students should be permitted to use the restroom upon request, and be escorted to and from the restroom.
- Students should be provided water on request.

When should seclusion not be employed?

Seclusion should not be used:

- when substantial risk of injury no longer exists;
- when a known medical, physical or psychological condition of the student would make the seclusion procedures dangerous for that student (e.g., students expressing suicidal thoughts, students with heart or circulatory conditions, history of trauma, or other conditions). In these situations, alternative strategies should be planned in collaboration with the parent/guardian and in consultation with a medical or mental health specialist. These alternative strategies should be reflected in the PLP-IBSP.
- when the student engages in severe self-injurious behaviours;
- as a punishment, or to force compliance with staff commands.
- without parental/guardian consent.

Training

Crisis Intervention Training is training provided to selected staff members which addresses how to deal with aggressive, violent, or out of control behavioural crises. It includes specific techniques for physical restraint as well as prevention, and deescalation. The curriculum should result in certification of the individuals who complete the training and be approved by EECD. **De-escalation** means causing a situation to become more controlled, calm and less dangerous, thus lessening the risk for injury.

The curriculum currently approved by EECD is *Nonviolent Crisis Intervention (NVCI) training.* NVCI is a behaviour management system designed by the Crisis Prevention Institute (CPI) to aid staff members in maintaining the best possible care, welfare, safety, and security for disruptive, assaultive and out-of-control individuals during their most violent moments. This includes the recognition of escalating behaviours, preventative measures, appropriate de-escalation techniques, and NVCI physical intervention techniques.

Training in the use of physical restraint should include:

- Procedures for de-escalating problematic behaviors before they increase to a level or intensity necessitating physical intervention
- Information regarding the risks associated with manual physical restraint and procedures for assessing individual situations and students to determine if its use is appropriate and sufficiently safe
- The actual use of specific techniques that range from the least to most restrictive with ample opportunity for trainees to demonstrate proficiency in their use
- Techniques for implementing manual physical restraint with multiple staff members working as a team
- Techniques for assisting the student to re-enter the instructional environment and reengage in learning
- Instruction in the district's documentation and reporting requirements
- Procedures to identify and deal with possible medical emergencies resulting from the use of manual physical restraint

The Superintendent, in collaboration with EECD, may select another curriculum and method of providing training related to physical restraint and seclusion that meets applicable provincial standards (Appendix A).

School Districts are responsible for providing refresher training on physical restraint techniques on a regular basis to all staff members who have successfully completed the initial training component. The school district should identify those personnel to be trained and maintain a record that includes the name and position of the person trained; the date of the most recent training; an indication of whether it was initial training or "refresher" training; and whether the individual successfully completed the training and achieved proficiency. A core group of personnel in each school should be "certified" in crisis intervention techniques which will include the use of physical restraint.

Communicating, Documenting and Debriefing

Communicating

Immediately after the student has restored emotional and behavioural control following the use of physical restraint and/or seclusion, a staff member not involved with the incident should observe the student to ascertain if any injury has been sustained during the physical restraint or seclusion.

If appropriate and unless contraindicated in the student's PLP-IBSP, the student, with assistance from staff, will process the event at the earliest appropriate time.

Procedures and methods should be in place for instances of the use of physical restraint and seclusion to be reported to the administration at the school level (i.e., the principal or other administrator).

It is recommended that the Principal or designate verbally notify the parent/guardian as soon as possible each time physical restraint or seclusion is used. Notification by telephone should be provided before the end of the school day in which the restraint occurred. It is understood that phone contact may not always be feasible due to lack of availability of contact information and inability to reach the family. Reasonable efforts to reach the parent or legal guardian by telephone should be made and documented. If it was not possible to reach the family by telephone, written notification should be provided at the end of the school day. An alternate communication plan may be determined with the family as part of the PLP-IBSP.

Documenting

All use of physical restraint and seclusion should be documented in an incident report containing the elements listed below. It is recommended that all staff involved contribute to the completion of the incident report within one school day of the incident. Emergency interventions that result in injury must also be documented and reported in accordance with existing departmental and district policies and procedures.

A minimum of the following should be included in the incident report created after each instance of physical restraint or the use of seclusion:

- the student's name
- the date and time of the incident
- the duration of the physical restraint or seclusion
- interventions used immediately prior to the implementation of physical restraint or seclusion
- a brief description of the incident and/or student behaviour that resulted in implementation of physical restraint or seclusion

- restraint technique(s) used
- injuries (to students, staff, or others), and property damage if applicable
- whether the interventions were part of a PLP-IBSP
- a list of the school personnel who participated in the implementation, monitoring, and supervision of physical restraint or seclusion and whether they have up-to-date training related to physical restraint or seclusion
- the date and time of communication with the parent/guardian notifying him/her of the incident, and the summary of that communication
- additional follow-up required

The Principal will send a summary of the incident report to the parent/guardian within two school days following the use of physical restraint or seclusion unless another system has been established with the parent/guardian as part of the PLP-IBSP, and maintain a confidential copy of the report. (Appendix E)

Incident reports should be sent to a designated district administrator on a schedule determined by the school district.

Debriefing

It is strongly recommended that each staff member involved in an incident will engage in debriefing as determined in the provincially approved crisis intervention training model. Debriefing serves many purposes. For the purpose of these guidelines, the goal is to determine what could be done to prevent future instances for the need of physical restraint or seclusion for the student, and possible improvements in implementation of process and procedures.

Monitoring and Reporting

Monitoring of physical restraint and seclusion procedures should occur at multiple levels: school, district, and EECD.

School

The Principal and School-based Education Support Services (ESS) Team should be involved in monitoring the use of physical restraint and seclusion procedures for specific students, as well as the general use of these strategies within the school.

For specific students, the team should examine the circumstances of the event and what strategies may be appropriate to avoid the use of physical restraint or seclusion procedures.

Monitoring of physical restraint and seclusion procedures at the school-level should include an analysis of:

- the frequency, duration, and location of these procedures
- staff members involved
- the appropriate use of these procedures
- documentation

School administrators use this information to determine if programming changes should be considered for individual students and whether staff members require additional training and support.

District

The Superintendent or designate is responsible for planning and oversight of the use of physical restraint and seclusion procedures, and data collection and review in the district.

The Superintendent or designate will conduct an annual review of all data associated with these guidelines. The process shall include summary data taken from the incident reports. The purpose is to identify any issues and/or practices that require further attention.

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Appendix A

Provincial Standards for Crisis Intervention Training Programs for Supporting Individuals Engaging in Violent Behaviour

An effective crisis intervention training model:

- Is externally developed and has a record of successful implementation in a variety of settings (i.e., developed by a program or individual independent of the school).
- Includes a curriculum that is available for review. Emphasizes prevention of the type of events that require physical intervention, including relationship building, positive approaches to prevention of escalation, and an emphasis on de-escalation skills.
- Promotes safety as the only acceptable reason to use physical intervention.
- Includes instruction in the physiological effects of restraint and the monitoring of physical distress signs, including positional asphyxia.
- Includes instruction in personal safety and evasion techniques.
- Includes instruction in safe holding techniques. This instruction must include discussion and modeling, an opportunity to physically practice the techniques, and a requirement that the staff member demonstrate competency in the model.
- Includes techniques on how to help the student process or debrief the event.
- Includes information on how staff members are to debrief the event, including reviewing the event to understand how it evolved and to uncover areas of improvement for future situations; assisting staff members in managing the stress of the event; documentation of the event; and communication about the event to appropriate parties, including parents, the school administration, and, as needed, other students and staff members.
- Requires that staff successfully complete post-training assessments of knowledge and skill.
- Specifies a minimum training/refresher training schedule.

Project REST, 2004



Appendix **B**

Debrief and Problem Solving Process

Fill in during a staff debriefing after every physical intervention

Recovered - Before entering the problem solving process it is important that those involved have time to recover from the incident. This will require the person leading the session to explore the needs of those involved. Being empathic and acknowledging that everyone processes events differently based on their experiences and coping skills. It is important to acknowledge the fears and/or anxiety of those involved and develop a shared understanding of the issues that need to be solved.

- Are there any medical needs (tetanus, injury etc)?
- Has all necessary paperwork been filled out?
- Has time been provided to regain control?
- Has support been accessed (Guidance, colleague etc)?

Debrief- When incidents occur, particularly traumatic ones, the effects can be far reaching and can affect not just those involved in the incident but those on the peripheral. Take time to consider all that may be affected. Being part of the solution can help people regain control and relieve fear of the unknown.

- What happened?
- Who was involved?
- Where did it occur?
- What were you thinking at the time?

Brainstorm – This is the time to be solution focused. What can we do to reduce the likelihood of this occurring in the future?

- What could have triggered this?
- How did we react? What could we do differently?
- What do we know/understand about those involved (triggers/diagnosis/what has been tried in the past?)
- Do we need additional training?
- Who can help, if needed?

Decide/Action items- Come to a decision on what changes will improve future interventions?

- What will we do in the future?
- Who is responsible for action items?
- How will we report/communicate these changes?

Provide support – Thank everyone for their hard work and commitment to the process

Appendix C



BRIEF INCIDENT SUMMARY – to be completed as soon as possible to be used for staff debriefing (Postvention) later:

What happened?

Who was present?

Where did the incident happen?

When did the incident happen?

How was the incident resolved?

What else is important to know about this incident? (e.g. was anyone hurt?)

Who else may require support in debriefing the incident? (e.g. student/volunteer/ bystander?)

Incident summary completed by:

(signature)

(position)

(date)



Appendix D

Restraint/Seclusion Incident Report

Student's Name:
School:
Date & time of incident:
Duration of Physical Restraint or
Seclusion: [beginning and end time]
Interventions used immediately prior to
physical restraint or seclusion:
A brief description of the incident and/or
student behavior that resulted in implementation of physical restraint or
seclusion:
Description of injuries [to students, staff, or
others] or property damage:
Restraint technique used:
Plan for dealing with student behaviour in
the future:
Who participated in the implementation,
and monitoring and what is their training:
Date and time parent was notified:
Was the intervention related to the PLP- IBSP?
Additional follow-up required:

Principal:

cc Cumulative Record Coordinator of Education Support Services/PLEP Parent/Guardian Director of Schools/ESS



Appendix E

Ctudentie News	
Student's Name:	
School:	
Date & time of incident:	
Duration of Physical Restraint or	
Seclusion: [beginning and end time]	
Interventions used immediately prior to	
physical restraint or seclusion:	
A brief description of the incident and/or	
student behavior that resulted in	
implementation of physical restraint or	
seclusion:	
Restraint technique used:	
Restraint technique useu.	
Dion for dealing with start the tast	
Plan for dealing with student behaviour in	
the future:	
Was the intervention related to the PLP-	
IBSP?	
.=	
Additional follow up required:	
Additional follow-up required:	

Restraint/Seclusion Incident Report Summary for Parents

Principal:

Provincial Assessment Program

Protocols for Accommodations and Exemptions



Provincial Assessment Program

Protocols for Accommodations and Exemptions

April 2010 Revised April 2012

Assessment and Evaluation Branch Department of Education and Early Childhood Development Province of New Brunswick P.O Box 6000 Fredericton, N.B. E3B 5H1 Canada

www.gnb.ca/education

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New Brunswick Provincial Assessments Protocols for Accommodations and Exemptions

Preface

This document replaces the April 2010 version of Protocols for Accommodations and Exemptions published by the Assessment and Evaluation Branch.

The *Protocols for Accommodations and Exemptions* were developed in collaboration with New Brunswick teachers, resource teachers and the Education Support Services branch in the Department of Education and Early Childhood Development and is based on best practices for inclusion.

Provincial assessments are compulsory for all students enrolled in New Brunswick schools. As these assessments are meant to be as inclusive as possible, a host of accommodations are provided for students. Accommodations fall into two broad categories: *universal* and *justified*. Accommodations should be fully explored before an exemption is considered.

In certain circumstances, it is necessary and appropriate for students to be exempted from participating in provincial assessments if the testing format does not allow demonstration of their learning, even with accommodations. Exemptions fall into three broad categories: *academic, social/emotional* and *unforeseen*. Typically, academic exemptions are sought for students following an individualized Special Education Plan (SEP-I). Students who are exempt due to an SEP-I should be assessed on those goals that are set out in their Special Education Plan(SEP). Exemptions may be considered for English Language Learners (ELL) (See page 8).

Please reference the *Protocols for Provincial Assessments* 2010 (Revised) for further information. These documents can be accessed on the Assessment and Evaluation section of the NBED portal: <u>https://portal.nbed.nb.ca/tr/AaE/Pages/default.aspx.</u>

Accommodations

Definition

Accommodations are those supports, methods and practices that are used in the classroom enabling a student to participate as independently as possible. There are many ways in which accommodations can be used to support students when they are participating in a provincial assessment. Within the context of provincial assessments, students may require either *universal* or *justifiable* accommodation:

- Universal accommodations are those strategies, technologies or adjustments that enable a student to reach prescribed outcomes. Universal accommodations do not necessitate an SEP or prior approval for provincial assessments.
- Justifiable accommodations are documented strategies, technologies or adjustments without which the student would not be able to demonstrate knowledge. These accommodations are documented within the SEP and require prior approval to be accessed during provincial assessments.

For the purpose of large scale assessment, accommodations are alterations that do not jeopardize the integrity or content of the test, yet give students an equal opportunity to demonstrate what they know and can do as part of the assessment process.



Types of Accommodations

Accommodations in presentation affect the way directions and content are delivered to students. Students with visual, hearing or learning difficulties are much more able to engage in the content when it is presented in a form they can understand.

Accommodations in response offer different ways for students to respond to assessment questions. They help students with visual and hearing impairments, physical disabilities and organizational problems to structure, monitor or put words directly on paper.

Accommodations in setting affect either where a test is taken or the way in which the testing environment is set up. Changing the environment can be especially helpful to students who are easily distracted.

Accommodations in timing or scheduling allow flexibility in the timing of the assessment. Generally, these are chosen for students who may need more time to process information or who need breaks throughout the testing process to regroup and focus.



Universal Accommodations

Accommodation	Description	Туре	Applicable Assessment
Read directions aloud	The directions portion of the assessment is read to the student. Reading comprehension passages and accompanying questions may not be read aloud to students.	Presentation	All
Allow extra time	Student may take longer than the time typically allowed. Up to double the allocated assessment time is considered a <i>universal</i> accommodation. If more than double time is required, it is considered ex- tended time and a <i>justified</i> accommodation. This requires the submission of a <i>Request for Justified Accommodation</i> form.	Timing	All except Timed Basic Facts (Math)
Sign-interpret directions	Directions are presented via sign language.	Presentation	All
Repeat/Re-Read/Clarify	Directions may be clarified for the student through restatement.	Presentation	All
Use a familiar examiner	Someone other than the regular test examiner who the student knows and has worked with in the past gives the test to the student. (<i>Universal</i> with the exception of the child's parent or guardian)	Presentation	All
Encourage the student	Test administrator may motivate or encourage the student to continue or remain on task.	Presentation	All
Provide a page turner	The student with mobility limitations receives assistance turning the pages of the test booklet.	Presentation	All
Provide a computer or word processor	The student uses a computer or word processor (e.g. DANA, NEO), but the spellcheck and autocorrect options must be disabled.	Response	All
Provide a communica- tion device	Various devices (e.g. Symbol boards) may be provided for the student to use in giving responses.	Response	All except Writing
Provide individual assessment	The student is assessed separately from other students.	Setting	All
Assess in a small group	The student is assessed in a small group separate from other students.	Setting	All
Assess in a carrel	The student is assessed while seated in a study carrel.	Setting	All
Assess in a separate room	The student is assessed in a separate room.	Setting	All
Designate a seat location	The student is assessed in a specifically designated seat location, usually in close proximity to the test administrator.	Setting	All
Minimize distractions	The student is assessed in a quiet environment.	Setting	All
Increase or decrease op- portunity for movement	The student is assessed in an environment that allows for increased or decreased opportunity for movement (e.g. The student may be allowed to walk around).	Setting	All
Allow appropriate breaks	Time away from the test is allowed during tests typically administered without breaks, sometimes with conditions about when breaks can occur and supervision (e.g. not dur- ing subtests) and how long they can be.	Timing	All except Timed Basic Facts (Math)

Justified Accommodations

Accommodation	Description	Туре	Applicable Assessment
Large print	All parts of the assessment are in print larger than that typically used.	Presentation	All
Coloured Paper	All parts of the assessment are printed in colour.	Presentation	All
Braille	All parts of the assessment are converted to braille.	Presentation	All
Extended time	The student may take longer than the time typically allowed. Up to double the allocated assessment time is considered a <i>universal</i> accommodation. If more than double time is required, it is considered extended time and a <i>justified</i> accommodation, requiring the submission of a <i>Request for Justified Accommodation</i> form.	Timing	All except Timed Basic Facts (Math)
Brailler	The student is provided with a device or computer that generates responses in braille. The auto-correct function will be disabled.	Response	All
Speech / text device	The student's verbal responses are transferred to text via a speech/text device (e.g. Dynavox). Word prediction software (student select) is provided.	Response	All
Proctor or scribe (See <i>A Guide for Scribes</i> in the Appendix.)	The student responds verbally and a proctor or scribe then transcribes this to the booklet. Scribes are not appropriate for Writing assessments.	Response	Only Science and Math
Answers written in test booklet	Responses may be written in the test booklet rather than on the answer sheet.	Response	All
Read questions aloud	The assessment items are read to the student. See note below.	Presentation	Only Science and Math
Text-speech	The assessment items are read to the student. (e.g. Dragon, etc.) See note below.	Presentation	Only Science and Math
Centres of Excellence or Medical setting (hospital, rehabilitation centre)	The student is assessed when out of school for illness or medical conditions. (Special circumstances require professional documentation)	Setting	All
Word-prediction software	Students who are using assistive technologies (e.g. Word Q)	Response	All

Note: Recorded versions are not appropriate accommodations for the reading comprehension portion of the provincial assessment. This type of accommodation for reading alters the assessment; therefore, recorded versions are not available.

Scribes are not appropriate accommodations for writing. Please see assistive technologies for appropriate accommodations for students.

Accommodation Procedure

Universal accommodations

Universal accommodations are available to any student at the school's discretion. It is not necessary to apply or provide any documentation for these accommodations for any provincial assessment. Please see the section in this document listing *universal accommodations*.

Justified accommodations

- 1. Requests for Justified Accommodations must be submitted using the Provincial Assessment Protocol Accommodation and Exemptions (PAPAE) link from the Department of Education and Early Childhood Development's portal site.
- 2. On the *Request for Justified Accommodation* form, fill in all applicable areas, including grade level and date (including year).
- 3. Once an online request is completed at the school resource level, including verification from the school principal, it is received by the district learning specialist responsible for Student Services. On approval, the district learning Specialist will forward it to the Assessment and Evaluation Branch to approve or reject.
- 4. Confirmation of requests will be sent electronically from the Assessment and Evaluation Branch to the learning specialist responsible for Student Services in the district. Please check the portal site for the status of requests.

Note: Check the due dates identified in the assessment timetable sent to your school's administrators. It is important that requests for large-print, braille or other formats be submitted in a timely fashion to allow for the necessary arrangements.

Exemptions

Definition

In certain circumstances, it is not appropriate for students to participate in provincial assessments. Any decision to exempt a student from any provincial assessment must be made in collaboration with the student's parent(s) or guardian(s).

Within the context of provincial assessments, students may require an exemption for *academic, social/emotional or unforeseen* reasons.

Academic: The student has been identified with exceptionalities and has a current individualized Special Education Plan (SEP-I) that identifies the need for the requested exemption in the assessed subject area. Typically, these students are following an SEP-I and are not expected to attain the curricular outcomes and standards. This has been communicated to parent(s) or guardian(s) and an alternate evaluation of progress has been determined within the SEP-I. The SEP-I constitutes the necessary documentation for exemption; therefore, it is not necessary to include this information with the submission unless requested by the Department of Education and Early Childhood Development. Typically, this constitutes the largest category of exemption requests.

For students who are not following an SEP-I and require an academic exemption, documentation must accompany the application detailing the necessity for exemption. Typically, these students are following a modified Special Eduction Plan (SEP-M).

Note: English Language Learners should participate in provincial assessments in sofar as possible. In extreme circumstances—where a student would not be able to attempt any portion of the assessment, even with accommodations— an exemption will be considered. English Language Learners do not require an SEP to qualify for an exemption; however, documentation must accompany the application detailing the necessity for exemption.

Social/Emotional: If the student has been identified with a significant social, emotional or behavioural impairment and cannot be accommodated by such means as alternate location, extra time, etc., an exemption may be sought. Typically, these students are following an Individual Behaviour Support Plan (IBSP) and are not expected to attain the curricular outcomes and standards at their grade level. This has been communicated to parent(s) or guardian(s) and an alternate evaluation of progress has been determined within the IBSP. The IBSP constitutes the necessary documentation for exemption; therefore, it is not necessary to include this information with the submission unless requested by the district or Department of Education and Early Childhood Development.

Unforeseen circumstance: In the event of serious illness, bereavement or other exceptional and unforeseen circumstance, an on-the-spot exemption can be granted. These situations require that the director of education be contacted immediately. The director of education will then contact the director of Assessment and Evaluation and the student will be exempted.

Note: Requests for exemption due to *unforeseen* circumstances must be sent to the director of education as soon as the circumstance arises. Depending on the situation, an email or other form of communication may be most appropriate and signatures are not required. The director of education will communicate this to the director of Assessment and Evaluation and the student will be exempted.



Exemption Procedure

- 1. Requests for exemption must be submitted using the Provincial Assessment Protocol Accommodation and Exemptions (PAPAE) portal site.
- 2. On the *Request for Exemption*, fill in all applicable areas, including grade level and date (including year).
- 3. Confirmation of exemption requests will be sent from the Assessment and Evaluation Branch via the PAPAE site to the Learning Specialist responsible for Student Services in the district.

	Exemptions from the English Language Proficiency Assessment/Reassessment (ELPA/R)
	Assessment/Reassessment (ELFA/R)
	The following two types of exceptions have been developed for the ELPA/R as it is a
	graduation requirement from New Brunswick high schools.
	Permanent exemptions are for those students who will not, at any point, write the
	ELPA/R. These exemptions must be substantiated through an SEP that
	warrants this type of an exemption. Once a permanent exemption is approved,
	there is no need to submit in any subsequent year. The student will be listed as
	a permanent exemption in our database.
	Temporary exemptions are for those students who will not be participating in that
	particular year, but will participate in the future. These reasons can range from
	academic readiness to absence during the time of writing. All of the proper
	signatures must be present before department consideration of approval. If a
	student is approved for a temporary exemption, he or she will be registered for
	the next administration of the ELPA/R. Potential graduates are not eligible for a
	temporary exemption.
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Appendix A

A Guide for Scribes

(Math and Science only)



Please remember that the student's work should be as much his or her own as if he or she were writing it. Your part in the process should be simply as a facilitator for the mechanical task of writing.

All sessions that occur between a scribe and a student, in connection with administration of this assessment, must be recorded and the audio recording then sent to the Department of Education and Early Childhood Education along with the student's other materials.

Accommodations for Instruction and Assessment



Accommodations for Instruction and Assessment

October 2010

Department of Education and Early Childhood Development Province of New Brunswick P.O Box 6000 Fredericton, N.B. E3B 5H1 Canada

www.gnb.ca/education

Accommodations for Instruction & Assessment

A critical part of teaching and assessing students is providing them with accommodations that support learning and that support their ability to demonstrate their knowledge.

This statement challenges the notion of who benefits from accommodations. The traditional view of accommodations was that they were solely for students on Special Education Plans (SEPs). The current reality is that accommodations benefit all students, as demonstrated by the increased use of FM systems in classrooms. The issue for educators is to differentiate between accommodations that are based on professional practice and classroom ecology and accommodations that are prerequisites to learning for students with exceptionalities.

Research by Bolt and Thurlow (2004) suggests that accommodation policies vary, so that approximately two-thirds of exceptional students are afforded accommodations in provincial assessments. The most common accommodations include extended time, alternative setting and/or read-aloud accommodations.

Principles for Accommodation

Every student has the right to expect that:

- 1 his or her learning outcomes, instruction, assessment and learning environment will be designed to respect his or her learning style, needs and strengths.
- 2 he or she will participate fully in the common learning environment, meaning an environment that is designed for all students, is typical for the student's age and grade and is shared with his or her neighbourhood peers.
- 3 systemic and individual accommodations will be considered and implemented as appropriate when evidence demonstrates that the status quo is not in the best interest of the student. This means provision of programming/learning, assessment and environments that actively respond to the student's needs and are reviewed regularly. It does not mean simply an absence of components of the universal program or the common learning environment.

from the New Brunswick Department of Education Definition of Inclusion, 2009

What accommodations are appropriate for which students? How do accommodations affect students' learning and their performance on tests? This document addresses these and other questions and explores the research base in this area.

The Big Picture: Expectations, Content and Testing

Assessment for and of learning are both critically important to ensure that all students are successful.

As part of *Bill 85: Amendment to the School Districts Regulation – Schools Act* (1992), schools are accountable for the education of **all** students. More than ever before, exceptional students are expected to participate in the prescribed provincial curriculum and provincial assessments to the maximum extent possible.

Two critical elements come together in this new world of accountability. Schools must now carefully consider:

- what students are expected to know. There is a greater onus on teachers to follow the prescribed curriculum and outcomes for all subject areas. Now it's important that all students be held to the highest possible academic standards.
- how well exceptional students are learning. Including exceptional students with SEPs in provincial assessments is a logical and essential element in improving results for them and the province. Without assessing students, how will we know if they are actually learning what they need to know or what they may still need to master?

In Canada, the Charter of Rights and Freedoms speaks of the right for all students to benefit from an education without discrimination. To elaborate:

"...equal rights and freedom from discrimination mean not only an expectation to accommodate an individual into an existing process defined by law, but also an expectation to adapt the existing structures so that the service or benefit provided is 'available, accessible, meaningful and rewarding' or the individual..."

Setting the Direction, 2009



Accommodations can help students successfully meet curricular outcomes and, in turn, demonstrate their learning. As in the Canadian Charter, the New Brunswick *Human Rights Act* requires the use of accommodations when necessary (Elliott, Kratochwill and Schulte, 1999; McDonnell, McLaughlin and Morison, 1997; Pitoniak and Royer, 2001), and the New Brunswick Department of Education has issued guidance in this area. Resources are identified throughout this document, beginning with those in the following Principles for Equity box.

Principles for Equity

The principle of Universal Design for Learning is the starting point for an inclusive public education system. This principle holds that the needs of the greatest number of students be met by maximizing the usability of programs, services, practices and learning environments. When Universal Design for Learning alone is insufficient to meet the needs of an individual student or groups of students, accommodations are required, both ethically and legally.

The New Brunswick public education system will ensure compliance with the *Canadian Charter of Rights and Freedoms* and the New Brunswick *Human Rights Act*, which require reasonable accommodation of students' special needs unless they demonstrably give rise to undue hardship due to cost, risk to safety, or impact on others. "Provided an appropriate process has been followed and all other options have been eliminated, a potential accommodation of a student may be rejected where it can be proven that it would cause undue hardship as a result of its impact on other students." *(New Brunswick Human Rights Commission Guideline on Accommodating Students with a Disability)*

The New Brunswick Department of Education Definition of Inclusion, 2009

Deciding which Accommodations a Student Needs

The challenge for educators and families is to decide which accommodations will help students learn new skills and knowledge and which accommodations will help them demonstrate what they have learned (Shriner and DeStefano, 2003). The Online Accommodations Bibliography at the US National Center on Educational Outcomes (NCEO) is an excellent source of information on the range of possible accommodations as well as the effects of various testing accommodations for students with exceptionalities.

The difference between accommodations that are justifiable and those that are "universal" to all students is discussed later in this document. As part of their professional practice and in adherence to the principles of Universal Design for Learning, teachers daily provide accommodation(s) to a full range of students. The guiding questions listed on the following page (Choosing and Using Accommodations: Student Services Team Considerations) can assist in choosing and using the appropriate accommodations in situations where students require justifiable accommodations.

Choosing and Using Accommodations: Student Services Team Considerations

The questions below are designed to serve as a tool to help SEP Teams discuss and determine what accommodations a student needs in the classroom or in assessment. They have been adapted from the US Dissemination Center for Children with Disabilities and changed to reflect the Canadian educational context.

- What kinds of instructional strategies (e.g., visual, tactile, auditory, combination) work best for the student?
- What learning strategies will help the student overcome challenges?
- What accommodations increase the student's access to instruction and assessment?
- What accommodations has the student tried in the past?
- What has worked well and in what situations?
- What accommodation(s) does the student prefer?
- Are there ways to improve the student's use of the accommodation?
- Does the student still need the accommodation?
- What are the challenges of providing the student's preferred accommodations and how can these be overcome?
- Are there other accommodations that the student should try?
- Are there ways the student can use preferred accommodations outside the school (e.g., at home, on the job, in the community)?
- Are preferred accommodations allowed on provincial and district assessments?
- How can the student learn to request preferred accommodations (e.g., self-advocacy)?
- Are there opportunities for the student to use preferred accommodations on practice tests?
- What arrangements need to be made to make sure the student's preferred accommodations are available in assessments situations?
- How can the actual use of accommodations be documented?

Student Services Team (SST) must be involved.

The SST determines whether a student requires accommodations, and if so, which accommodations are prerequisites for the student to access instruction designed to meet educational standards established by the district and province. Considerations must be given to the specific strengths, challenges, and routines of that student.

When determining accommodations, particular attention should be paid to ensure that the accommodations do not give one student an unfair advantage over another. Care must also be taken not to alter or compromise the test's ability to assess particular knowledge or skills. For example, providing a test in braille to a student with a significant visual impairment would not appear to provide an unfair advantage over a sighted peer participating in a standard administration of the test. Having an adult read aloud questions on a math assessment may not necessarily alter the assessment of math concepts, but having the same adult read aloud on a test of reading comprehension does have the effect of changing the assessment from one of reading comprehension to one of listening comprehension and, in effect, results in the assessment of a different skill altogether.
Conventional wisdom holds that, if students who do not have a disability also make gains when given the same accommodation (e.g., extra time on a test) as students with disabilities, then there are questions about fairness and integrity in the testing situation (Sireci, Li and Scarpati, 2003). As researchers and policy makers continue to wrestle with these complex issues, SEP teams will need to stay current as policies and recommended practices evolve. It is important to make the distinction between standard accommodations (those that don't alter the nature of what a test is designed to measure) and nonstandard accommodations (those with the potential to significantly change what is being tested) (Thurlow and Wiener, 2000). Accommodations chosen for testing situations can be most effective when they are adopted as an integral part of day-to-day instruction to ensure that students have ample opportunity to practice their use prior to a mandated testing situation.

Students as Self-advocates

Students can help inform accommodation decisions by talking with the Student Services team about what works best for them (Thurlow, Thompson, Walz and Shin, 2001). Involving students in the process of determining goals and respecting their voices about which accommodations might best help them achieve those goals recognizes them as valued participants and can ultimately lead to feelings of increased control and responsibility in their education.

The Value of Progress Monitoring

Assessments inform parents, students, school staff, community members and policy makers of just how well students are doing. When appropriately applied, assessment can also help teachers make decisions about what strategies to use to address the needs of their students with disabilities. When teachers use information collected regularly within their own classrooms, they are able to make adjustments to their instruction and help students succeed.

Progress monitoring is a research-based strategy that measures student achievement through the use of targeted instruction and frequent (e.g., weekly, monthly) assessment of academic performance. Based on the information collected, teachers can chart a student's progress toward his or her individual goals and make adjustments when necessary—including adjustments to instructional approaches and to the number and types of accommodations used (Quenemoen, Thurlow, Moen, Thompson and Blount Morse, 2004). Not insignificantly, such regular student assessment also allows teachers to pinpoint when a student is having difficulty.

As shown in the Assessment Accommodations in Action box, assessment strategies in progress monitoring can take many forms, including: curriculum-based measurement (CBM), classroom assessments (system- or teacher-developed), adaptive assessments and large-scale assessments (including state- and district-wide assessments).

Progress monitoring is especially useful with students who have difficulty showing what they know in typical assessments. When the accommodations specified in each student's SEP are consistently provided, progress monitoring allows a real view of what skills and knowledge a student has. School-based SSTs and educators can then use the information from these assessments to ensure that students are taught in a way that meets their needs and helps them address their academic goals.



Continual progress monitoring also helps to determine whether a selected accommodation is having the desired effect. Often, accommodations are assigned but not evaluated to determine whether they help the student. As educators, we should keep track of what's helpful and what's not helpful and use that information as the basis for determining whether to use a specific accommodation during an assessment. The National Center on Student Progress Monitoring offers a wide variety of resources to help educators build progress monitoring systems in their classrooms and schools. The Review of Progress Monitoring Tools (http://www.rti4success.org/tools_charts/progress.php), for example, helps teachers make decisions about which assessments to use.

Assessments are evaluated along a number of important dimensions, including:

- reliability and validity
- alternate forms
- sensitivity to student improvement
- improvement of teaching or student learning
- rates of improvement

Fundamentally, progress monitoring works when teachers use it regularly to reflect on how well instruction is supporting each student's needs. "Progress monitoring in a standards-based system can be the key to unlocking powerful skills and knowledge for teachers and students and can result in success for the school, district and state in an inclusive standards-based assessment and accountability system" (Quenemon et al., 2003, p. 16).

Assessment Accommodations in Action

Case Study

Beth is a conscientious student in Grade 8 with visual-motor coordination difficulties. In the classroom, her disability interferes with her ability to transfer information from the chalkboard or overhead to a paper on her desk. It also is hard for her to copy information from a book to a piece of paper; typically, she loses her place in the book. One of the accommodations that Beth's teacher has found helpful is to let Beth write all answers in her textbook or activity book, rather than on a separate sheet. Her Student Services team uses this information when considering possible accommodations for Beth on the upcoming provincial assessment. The team decides there is sufficient evidence that Beth will not be able to track from a test booklet to a test response form.

Because Beth has been successful using the response accommodation of marking in the actual booklet, the team decides this also is an appropriate accommodation for her on the provincial assessment.

Categories of Accommodations (Universal and Justifiable)

There are many ways in which accommodations can be used to support students in the classroom and when they are participating in a district or provincial assessment.

Accommodations Defined

Universal accommodations are those strategies, technologies or adjustments that enable a student to reach prescribed outcomes and can be used at the teacher's or student's discretion. Universal accommodations do not necessitate an SEP or prior approval for provincial assessments.

Justifiable accommodations are documented strategies, technologies or adjustments without which the student would not be able to access the curriculum. These accommodations are documented within an SEP and require prior approval by the Department of Education to be accessed during provincial assessment.

Universal and justified accommodations can be classified under the following domains:

- presentation
- response
- setting
- timing/scheduling

In the following section, each domain will be defined with specific examples of accommodation type and impact.

Accommodations in presentation affect the way directions and content are delivered to students. Students with visual and hearing impairments, learning disabilities and learning difficulties may require access to content materials in an alternate format. Alternate methods or materials provide these students with equal access to information provided to their peers.

Presentation
AccommodationInstruction and
AssessmentLarge printAll parts of the text are in print larger than that typically used.Read directions aloudItems are read to the student. (Justified)Sign interpret directions or
questionsDirections or questions are presented to the student via sign
language.

Some examples of accommodations in presentation include:

Accommodations in response offer different ways for students to demonstrate their knowledge. They help students with visual and hearing impairments, physical disabilities and organizational problems to structure, monitor or directly put words to paper.

Response Accommodation	Instruction and Assessment
Proctor or scribe	The student responds verbally and a proctor or scribe then transcribes for the student.
Computer or word processor	The student uses a computer or word processor (e.g. DANA, NEO), but the spellcheck and autocorrect options must be disabled for assessment. (Universal)
Answers written in test booklets (Assessment)	Responses may be written in the test booklet rather than on answer sheets. (Justified)
Communication device	Various devices (e.g., symbol boards) may be provided for the student to use in giving responses.
Brailler	The student produces his or her work using braille, which can either be manually transcribed into print or, if electronic, internally translated and a print copy generated for a sighted assessor.
Sign responses	Responses may be given by sign language to a sign language interpreter. (Universal)
Speech/text device	The student's verbal responses are transferred to text via a speech/text device (e.g., Dynavox). (Justified)

Accommodations in setting change or alter the environment to facilitate both learning and the demonstration of a student's knowledge. This is especially helpful for students who are easily distracted.

Some examples of accommodations in setting include:

Setting Accommodation	Instruction and Assessment
Individual assessment	The student is assessed separately from other students. (Universal)
Small group	The student is assessed in a small group separate from other students. (Universal)
Carrel	The student is assessed while seated in a study carrel. (Universal)

Separate room	The student is assessed in a separate room. (Universal)
Seat location	The student is assessed in a specifically designated seat location, usually in close proximity to the test administrator. (Universal)
Minimized distractions	The student is assessed in a quiet environment. (Universal)
Medical setting (e.g. hospital, rehabilitation centre)	The student is assessed when out of school for illness or medical conditions. (Special circumstances – professional documentation required)
Increased/decreased opportunity for movement	The student is assessed in an environment that allows for increased or decreased opportunity for movement (e.g., the student may be allowed to walk around). (Universal)

Accommodations in timing or scheduling allow flexibility in the timing of an assessment. Generally, these are chosen for students who may need more time to process information or who need breaks throughout the testing process to regroup and refocus. Timing and scheduling accommodations include:

Timing/Scheduling Accommodation	Instruction and Assessment
Extended time (more than double)	Student may take longer than the time typically allowed. (Justified)
Breaks	Time away from the test is allowed during tests typically administered without breaks, sometimes with conditions about when breaks can occur (e.g., not during subtests) and how long they can be. (Universal)

Accommodations affect test scores for exceptional students, lowering scores in some cases, raising scores in most others (Kettler et al., 2005). Lowered scores appear to result when accommodations are poorly matched to student need or when the student has not had sufficient opportunity to practice using an accommodation in day-to-day settings prior to the testing situation.

The use of read-aloud accommodations on assessments of mathematics for students with low reading skills, and the use of braille for students who are blind or whose sight is impaired were found to be the most effective accommodations in a meta-analytic synthesis by Tindal and Fuchs (2000).

However, because of inconclusive and contradictory findings, it cannot automatically be stated that accommodations provide an accurate picture of a student's ability (Koenig and Bachman, 2004). In addition, it cannot automatically be stated that scores obtained by exceptional students in accommodated situations can always be compared fairly to scores obtained by students who do not have a disability in unaccommodated situations (Koenig and Bachman, 2004).

These last two points in particular make the important task of choosing appropriate accommodations for individual students all the more challenging. Exceptional students bring an extremely broad range of strengths and weaknesses with them to the classroom and testing environments. It is quite possible, in fact, for two students with very similar exceptionalities to require very different accommodations.

Teacher training and practical guidance in selecting appropriate accommodations for individual students would clearly go a long way toward improving and informing decision-making (Helwig and Tindal, 2003).

What to do? First, it's good to know that there are readily available tools and resources. Refer to the Choosing and Using Accommodations box in this document for such tools. Second, it's important to receive targeted and sustained professional development to strengthen professional skills and judgment in this area.

We must take care to match student needs with the right accommodations to enable students to show what they know and have learned in the best way possible. Our goal is for teachers to be specific when identifying accommodations and to ensure that they match very closely to the student's disability.



Conclusion

The goal of school is learning. Assessments are just one way—albeit a very important way—to find out whether students have learned. For many students, especially those with disabilities, being able to show they have learned is greatly improved when teachers provide individualized instruction and appropriate accommodations in the classroom and in testing situations.

The sheer variety of accommodations and assessments allows SSTs a range of tools by which to understand and maximize student ability. Progress monitoring adds an extra and powerful tool for continually checking on student growth and adjusting instruction to match student needs. Carefully selecting accommodations to address student strengths, challenges and experiences means that students with disabilities have the supports they need to access classroom instruction and then demonstrate what they've learned.

Investigating and providing strategies such as accommodations that support student success can have obviously beneficial results for students. This is reason enough, even if the law did not require it, to provide accommodation strategies. In addition, they can benefit our schools. Schools and educational systems as a whole are accountable for the results they achieve and must demonstrate that their students are learning.

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Section 4

Other Documents



New Brunswick Human Rights Commission

Guideline on Accommodating Students with a Disability

Adopted on October 15, 2007

The New Brunswick Human Rights Commission develops guidelines as part of its mandate to prevent discrimination by offering opportunities for people to understand their legal rights and responsibilities under the Human Rights Code.

This guideline is subject to decisions by human rights boards of inquiry and by the courts, and should be read in conjunction with those decisions and with the specific language of the Human Rights Code. If there is any conflict between this guideline and the Code, the Code prevails. This guideline is not a substitute for legal advice. The Commission's staff is available to answer any questions regarding this guideline.

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SUMMARY

(Cross-references to the relevant sections of this guideline are shown in parentheses)

All students, including students with a physical or mental disability, have a right to an education. Students with a disability must be individually assessed and accommodated so that they are given the opportunity to meet their individual potential. (Section 5)

Public schools and other education providers that serve the public **must identify and** accurately assess students who, due to a disability, require reasonable accommodation in order to receive an effective instruction and fully benefit from the educational service they provide. (Section 5)

Public schools and other education providers that serve the public have a **legal obligation to accommodate students and parents with a disability to the point of undue hardship**. Damages and other remedies may be ordered by Human Rights Boards of Inquiry against education providers, such as district education councils, that fail to reasonably accommodate a student with a disability. (Section 5)

The duty to reasonably accommodate includes an obligation to **include students with** a disability in regular classrooms (Section 6), to permit absences from school due to a disability (Section 8) and to protect students with a disability from harassment by staff and other students (Section 7). It also includes an obligation to reasonably accommodate disabled parents of students who may or may not have a disability (Section 5.1).

Students and parents have a legal obligation to cooperate with the education providers when determining the appropriate accommodation. (Section 11.1)

This guideline has been written to help education providers, students and parents understand these legal obligations.

The limits to this duty to reasonably accommodate are set out in the Meiorin Test. This legal test describes three conditions used to determine if reasonable accommodation has been made. They are that the standard (e.g. rule, practice, equipment, facilities) that has a discriminatory effect was (1) adopted for goals that are rationally connected to the function being performed, (2) adopted in good faith, and (3) reasonably necessary in the sense that the discrimination could not be avoided without causing undue hardship. (Section 10)

This guideline is **not intended to be an interpretation of the** *Education Act* and its regulations. Should there be a conflict between the Human Rights Code and the *Education Act* and its regulations, the *Code* prevails. (Section 1 and the Appendix)

The *Code* defines physical disability and mental disability. Case law has identified a large number of conditions that meet these criteria. (Sections 3 & 4)

Discrimination is differential treatment of, or **a failure to accommodate**, an individual on the basis of the individual's actual or presumed membership in or association with a class or group of persons as set out the *Code*, rather than on the basis of personal merit. (Section 5)

Discrimination need not be intentional and need not involve differences in treatment. On the contrary, **a lack of accommodation can constitute discrimination.** (Section 5)

Accommodation of students with a disability involves making adjustments to their educational environment, or providing alternative arrangements, to eliminate any discriminatory effect they would otherwise have on the students because of their disability. (Section 5.1)

The goal of accommodating students with a disability is to ensure their fullest possible participation, in a timely manner and to the same extent as non-disabled students, not only in the classroom, but in all aspects of the educational experience, including co- and extra-curricular activities, and to ensure that they have the opportunity to meet their individual potential. Educational administrators must consider the full range of the pupil's needs, including emotional, social, physical and personal safety needs. (Section 5.1)

Reasonableness is a consideration in accommodation cases. Persons seeking accommodation are entitled to **reasonable accommodation to the point of undue hardship**, **not necessarily the perfect solution nor their desired accommodation.** (Section 5.1)

Medical practitioners, educators, psychologists and parents must work together to determine the appropriate accommodation. The determination should be based primarily on the opinion of experts as to what is in the best interest of the student, and this may not coincide with the wishes of the parent(s) or student. (Section 5.1)

Accommodation must take into account the principles of dignity, individualization and inclusion. (Section 5.2)

Education providers must accommodate in a manner that **respects the dignity** of students with a disability. They must maintain a safe learning environment for students with a disability. **They may be liable if they know or ought to know that a student is harassed by other students. They must take steps to prevent harassment**, such as implementing programs to oppose bullying and celebrate all differences, and immediately address bullying and harassment that occurs. (Sections 5.2 & 7)

Blanket approaches to accommodation that rely solely on categories, labels and generalizations are not acceptable. **The emphasis must be on the individual student** and not on the category of disability. (Section 5.2) **Inclusion of students with a disability in regular classrooms is the norm**. Every effort short of undue hardship must be made to provide support to assure that students with a disability can achieve educational goals while included in the regular classroom. (Sections 5.2 & 6)

In exceptional circumstances, it may be in the best interest of a student with a disability to receive one-on-one or small group instruction for all or part of the day. In such cases, the overarching goal should be to provide reasonable accommodations to ensure that students can return to the regular classroom as quickly as possible. Timelines should be put into place for re-assessing students to determine if they may return to regular classrooms. **Assessments should be frequent and should be made on an individual basis.** (Section 5.2)

Barrier prevention is preferable to barrier removal. When constructing new buildings, undertaking renovations, purchasing new computer systems, launching new web sites, designing courses, setting up programs, services, policies and procedures, education-providers should keep in mind the principles of **universal design**. (Section 5.4)

In some cases, discipline policies, especially zero-tolerance policies, may have an adverse effect on students with a disability. All students with a disability, even those whose behaviour is disruptive or constitutes bullying or harassment, are entitled to receive accommodation up to the point of undue hardship. Education providers have a duty to **assess each student with a disability individually before imposing disciplinary sanctions.** (Section 8)

Students with a disability must not be disciplined for absences resulting from a disability. However, students with a disability may be required to meet minimum learning outcomes even when their ability to meet them may be affected by absenteeism due to a disability, provided their disability was accommodated short of undue hardship. (Section 8)

The courts are quite demanding as to what constitutes undue hardship, and the evidence required to prove it. The evidence must be objective, and in the case of cost, quantifiable. Impressionistic evidence is insufficient. (Section 11.2)

What constitutes undue hardship depends on several factors. The most commonly recognized are excessive costs (Section 11.3), serious risk to health or safety (Section 11.4) and impact on other people and on programs (Section 11.5). Another factor is the conduct of the student with a disability and his or her parents; a failure to cooperate may impose an undue hardship on the education provider and thus lead to the dismissal of a human rights complaint. (Section 11.1)

The impact on other students of accommodating a student with a disability is an element of undue hardship. Provided an appropriate process has been followed and all other options have been eliminated, a potential accommodation of a student with a disability may be rejected where it can be proven that it would cause undue hardship as a result of its impact on other students. (Section 11.5)

The cost factor is very stringent. A high standard applies when arguing that accommodation would create undue hardship due to excessive costs. For excessive costs to justify a failure to accommodate a student in public schools, they must be so high as to create an undue hardship to the provincial government. (Section 11.3)

Unions must cooperate in the accommodation process to the point of undue hardship, and are liable under the *Human Rights Code* if they fail to do so. However, according to the Meiorin Test, the impact on unions and their members is one of several factors that must be considered when determining whether an accommodation would cause undue hardship. (Section 11.5)

The responsibilities of students, parents, education providers, unions, professional associations and others are set out in section 9. The Appendix includes a summary of the case law on accommodation of students with a disability in school.

1. INTRODUCTION

Section 5 of the New Brunswick *Human Rights Act* (also called the *Human Rights Code*) prohibits discrimination based on 14 grounds, including physical or mental disability, in "accommodation, services and facilities available to the public." This includes educational institutions that are privately or publicly operated.

Complaints alleging discrimination based on disability are the most common complaints received by the New Brunswick Human Rights Commission. Some of these complaints concern the duty to accommodate students in school. Though education providers must not discriminate on any of 14 grounds listed in the *Code*, it was considered to be necessary to develop a guideline focused only on disability because of the prevalence and complexity of the issues that disability raises in the educational system.

New Brunswick has been a leader in the inclusion of students with a disability in regular classrooms, and the Province has made a great deal of headway in accommodating students with a disability, and education providers should be congratulated for this. Nevertheless, there remains room for improvement. This guideline is meant to describe a legal framework so that education service providers may understand their responsibilities under the *Human Rights Code*.

This guideline sets out the Commission's legal interpretation of the Human Rights Code in relation to the duty to reasonably accommodate students with a physical or mental disability from kindergarten to grade 12 in privately or publicly operated schools, including denominational schools, that are open to the public. It applies to prospective and current students, as well as to former students who are eligible to return to school (e.g. students who left school and previous graduate ("post-grad") students)

This guideline also applies to the duty to reasonably accommodate **disabled parents of students** who may or may not have a disability.

It does not apply to schools that fall under federal jurisdiction,¹ including schools operated by First Nations, but it applies to Aboriginal students in educational institutions that fall under provincial jurisdiction.

This guideline is **not intended to be an interpretation of the** *Education Act* and its regulations, nor an exhaustive identification of the relevant sections of the *Education Act* or the relevant policies of the Department of Education. In addition to this guideline, readers may wish to consult the *Education Act* and its regulations and the policies and other publications of the Department of Education.

The New Brunswick Human Rights Commission wishes to express its appreciation to the Ontario Human Rights Commission for permission to reproduce and adapt several

¹ For a fuller explanation, see http://www.chrc-ccdp.ca/discrimination/federally_regulated-en.asp

sections of its *Guidelines on Accessible Education*². Readers wishing to reproduce the sections of this guideline that came from the Ontario guideline must seek permission from the Province of Ontario.

The development of this guideline was also facilitated by Dr. Wayne MacKay's comprehensive report on inclusive education in New Brunswick.³

2. ROLE OF THE HUMAN RIGHTS COMMISSION

The New Brunswick Human Rights Commission is responsible for the administration of the New Brunswick *Human Rights Act*. With respect to the accommodation of students with a disability, its role is to:

- 1. receive and investigate complaints of discrimination with respect to the duty to reasonably accommodate students with a disability, and close, dismiss, conciliate and/or refer such complaints to a human rights Board of Inquiry;
- 2. conduct educational activities directed at parents, students, educational service providers and other stakeholders to inform them about the duty to reasonably accommodate students with a disability.

3. WORDING OF THE HUMAN RIGHTS CODE

The section of the New Brunswick *Human Rights Code* that pertains to education is Section 5, which reads as follows:

- 5(1) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall
 - (a) deny to any person or class of persons any accommodation, services or facilities available to the public, or
 - (b) discriminate against any person or class of persons with respect to any accommodation, services or facilities available to the public,

because of race, colour, religion, national origin, ancestry, place of origin, age, **physical disability, mental disability,** marital status, sexual orientation, sex, social condition, political belief or activity.

² Ontario, Ontario Human Rights Commission, *Guidelines on Accessible Education;* http://ohrc.on.ca/eng-lish/publications/accessible-education-guide.shtml

³ MacKay, A. Wayne, (2006), *Connecting Care and Challenge: Tapping our Human Potential, Inclusive Education: A Review of Programming and Services in New Brunswick,* AWM Legal Consulting, 347 pp. http://www.gnb.ca/0000/publications/mackay/MACKAYREPORTFINAL.pdf

"Physical disability" and "mental disability" are defined in section 2:

"physical disability" means any degree of disability, infirmity, malformation or disfigurement of a physical nature caused by bodily injury, illness or birth defect and, without limiting the generality of the foregoing, includes any disability resulting from any degree of paralysis or from diabetes mellitus, epilepsy, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or on a wheelchair, cane, crutch or other remedial device or appliance.

"mental disability" means

- (a) any condition of mental retardation or impairment,
- (b) any learning disability, or dysfunction in one or more of the mental processes involved in the comprehension or use of symbols or spoken language, or
- (c) any mental disorder.

4. MEANING OF DISABILITY

A wide variety of conditions can constitute a physical disability as defined in the *Code*. Some of the more common ones are blindness or visual impairment; deafness or hearing impairment; environmental sensitivities; epilepsy or seizures; injuries to limbs and body parts; obesity; paralysis; and spina bifida. In addition, the following illnesses or medical conditions, in alphabetical order, have also been found to constitute a physical disability: acne; AIDS; amputation; arthritis; asthma; autoimmune disease; back injury; broken arm, foot, limbs, etc; bronchitis; cancer; chronic fatigue syndrome; chronic pain syndrome; Crohn's disease; color blindness; diabetes; deformed arm or other limb; degenerative disc disease; excessive breast growth; gall bladder problems; Graves' disease; heart conditions; hepatitis A, B and C; hypertension; irritable bowel syndrome; kidney stones; lupus; migraine headaches; meningitis; missing finger; multiple sclerosis; muteness or speech impediments; knee pain; nerve pain and/or nerve disorder; perceived disability; permanent strain injury; seasonal allergies; shoulder injury; smoking; spinal injury; tendonitis; and thyroid disease.

Similarly, there are **numerous conditions that constitute a mental disability**. Some of the more common ones are: ADD; ADHD; anxiety; autism; depression; dyslexia; intellectual disability; and learning disability. In addition, the following illnesses or medical conditions, in alphabetical order, have been found to constitute a mental disability as defined under the *Code*: adjustment disorder with depressed mood; agoraphobia and panic attacks; alcoholism; an acute psychiatric attack; anxiety and depression with conversion syndrome; bipolar affective disorder; bipolar mood disorder with paranoid personality disorder; depressive psychiatric condition; depressive state of mind; fear of heights; generalized depression; kleptomania; manic depression; hysterical personality; globus hystericus; any mental disorder that impairs one's ability to act rationally (personality disorder with A or B traits); mixed anxiety disorder with fea-

tures of obsessive-compulsive disorder and generalized anxiety; nervous breakdown; nervous condition; nervous depression, panic disorder; paranoid schizophrenia; paranoid schizophrenic delusions; pre-existing personality and emotional psyche; pyromania; reactive depressive disorder; severe depression and delusional thinking; sexual deviation; situational depression; and being a slow learner.

Note that that these are not exhaustive lists, and other medical conditions could be considered physical or mental disabilities under the *Code*. Also note that a condition that was found to be disability in one case may be found not to be a disability in other cases due to differences in the severity of the condition, in how it is perceived, in the effects of the distinction being made, and in the wording of the relevant statute.

Some types of disabilities are not apparent to the average onlooker. Examples of nonevident disabilities include mental disabilities, learning disabilities, chronic fatigue syndrome, environmental sensitivities, hearing impairments and epilepsy.

The Supreme Court of Canada has established that a disability may be "the result of a physical limitation, an ailment, a social construct, a perceived limitation or a combination of all these factors." **Discrimination may be based as much on perceptions, myths and stereotypes, as on the existence of actual functional limitations**⁴. The focus is on the effects of the preference, exclusion or other type of differential treatment experienced by the person, and not on proof of physical limitations or the presence of an ailment.

Example: A probationary police officer has Crohn's disease. Though this disease does not limit what he can do on the job, the employer dismisses him out of concern that he will have a higher degree of absenteeism. In this case, Crohn's disease is a disability, despite the absence of any functional limitation, because of the employer's perceptions and assumptions about the disease, and how they became a barrier to the officer's employment.

5. REASONABLE ACCOMMODATION

All students, including students with a physical or mental disability, have a right to an education. Students with a disability must be individually assessed and accommodated so that they are given the opportunity to meet their individual potential.

Public schools and other education providers that serve the public **must identify and** accurately assess students who, due to a disability, require reasonable accommodation in order to receive an effective instruction and fully benefit from the educational service they provide.

⁴ *Quebec (Commission des droits de la personne et des droits de la jeunesse)* v. *Montreal (City); Quebec (Commission des droits de la personne et des droits de la jeunesse)* v. *Broisbriand (City),* [2001] 1 S.C.R. 655 at para. 79 & 39: http://scc.lexum.umontreal.ca/en/2000/2000scc27/2000scc27.html

Public schools and other education providers that serve the public have **a legal obligation to accommodate students and parents with a disability to the point of undue hardship**. A similar duty applies to all the grounds mentioned in the *Human Rights Code.*

Damages and other remedies may be ordered by Human Rights Boards of Inquiry against education providers, such as district education councils, that fail to reasonably accommodate a student with a disability.

The duty to reasonably accommodate is not specifically mentioned in legislation. It arises from case law (the decisions of courts and tribunals) interpreting the meaning of discrimination in section 15 of the *Canadian Charter of Rights and Freedoms* and in the various human rights (anti-discrimination) laws that apply in Canada.

In simple terms, discrimination is differential treatment of, or a failure to accommodate, an individual on the basis of the individual's actual or presumed membership in or association with a class or group of persons as set out the *Code*, rather than on the basis of personal merit.

Discrimination need not be intentional and need not involve differences in treatment. On the contrary, **a lack of accommodation can constitute discrimination.** It is the discriminatory effect of an action or policy that makes it discriminatory.

5.1 What is Accommodation?

The process for ensuring that all persons are treated equitably is called accommodation.

Accommodation of students with a disability involves making adjustments to their educational environment, or providing alternative arrangements, to eliminate any discriminatory effect they would otherwise have on the students because of their disability.

The goal of accommodating students with a disability is to ensure their fullest possible participation, in a timely manner and to the same extent as non-disabled students, not only in the classroom, but in all aspects of the educational experience, and to ensure that they have the opportunity to meet their individual potential.

The duty to reasonably accommodate students with a disability extends beyond formal learning outcomes. Educational administrators must also consider the full range of the pupil's needs⁵:

- intellectual and academic needs,
- communication needs,
- emotional and social needs,
- physical and personal safety needs.

The duty to reasonably accommodate also extends to co- and extra-curricular activities. This means selecting and supporting school activities that assure the highest degree of access for all students for school sports and cultural activities, field trips and class projects. This may require arranging appropriate transportation requirements, extra personal support and other steps to minimize barriers to participation.

Here are a few examples of accommodation of students:

Example: While in grade 3, a student with dyslexia received 60 minutes of small group (3 to 4 students) instruction with a resource teacher each day. Based on an assessment of the nature and extent of the student's needs, along with a review of her academic and social progress, this level of intensive support was determined to be no longer necessary once the student was in grade 4. The time with the resource teacher was reduced to three times a week.

Example: A school requires that all students in a course pass an in-class essay test worth 100% of the student's final grade. Unless it can be shown that the 100% essay mode of evaluation is an essential requirement of the course, this may be found to discriminate against students with learning disabilities and other types of disabilities that make it difficult to process large amounts of written material under strict time constraints.

Example: A school has arranged to bus a class of students to a zoo outside the school district and charge them \$20 each for the bus transportation, which covers the actual cost of the bus. However, there is no wheelchair accessible bus that can accommodate all the students. The school books a separate wheelchair accessible bus for the two students who use a wheelchair. A few other students can also sit in that bus. However, that bus costs \$40 per person. The school accommodates the students in a wheelchair by charging everyone \$20 each.

Example: Under certain circumstances, students who have already graduated may be re-admitted into public high schools as "previous graduate students." They might want to do this to improve their grades to be admitted to university, to increase literacy or communication skills, or to increase skills needed to transition to

⁵ Eaton v. Brant County Board of Education [1997] 1 S.C.R. 241 at paras. 17 to 20 (Supreme Court of Canada); http://scc.lexum.umontreal.ca/en/1997/1997rcs1-241/1997rcs1-241.html

the community and employment. It would be inappropriate to deny such a request for such an admission, or the accommodation needed by the student, because the student has a disability unless this would cause undue hardship.

The role of parents of students in public schools is recognized by the *Education Act⁶*. Parents provide a very important form of support to their children's education. For minor students to fully benefit from an educational service, their parents must be free from discrimination in their interaction with education providers. Accordingly, education providers must reasonably accommodate disabled parents so that their children, who may or may not have a disability, have the same educational opportunity as other students.

Example: A mother informs her children's teachers in elementary school that the mother is deaf and needs a sign language interpreter to communicate. The school arranges for a sign language interpreter at parent-teacher meetings so that the parent can fully participate.

Human rights Boards of Inquiry and the courts have constantly stated that reasonableness is a consideration in accommodation cases. **Persons seeking accommodation are entitled to reasonable accommodation to the point of undue hardship, not necessarily the perfect solution nor their desired accommodation**.

Medical practitioners, educators, psychologists and parents must work together to determine the appropriate accommodation. The determination should be based primarily on the opinion of experts as to what is in the best interest of the student, and this may not coincide with the wishes of the parent(s) or student.

When investigating complaints of an alleged lack of accommodation, many factors must be considered when determining when reasonable accommodation has been offered. They include, but may not be limited to, the following:

- accommodations recommended by health care professionals (physicians, psychologists, psychiatrists, physiotherapists, occupational therapists, speech therapists, chiropractors, etc);
- accommodations recommended by education professionals (resource teachers, school and district specialists, etc);
- whether there are conflicting accommodation requirements for a student because of one or more disabilities;
- the ability of the education service provider to provide all of the recommended or requested accommodations to the point of undue hardship;
- accommodations offered by the education service provider compared to those recommended by the relevant professionals, and those requested by the student or parent;
- accommodations accepted or refused by the student and/or parent.

⁶ Education Act, R.S.N.B. c. E-1.12, s. 13; http://www.gnb.ca/0062/acts/acts/e-01-12.htm

After a review of the relevant information, the Commission may close a complaint file if reasonable accommodation had been offered but was refused by the student and/or parents.

Example: A student with an environmental illness has provided medical documentation that states she requires: a clean environment with a 100% fresh air ventilation system at all times if possible; a classroom with no scents (perfumes, laundry soaps, chalk, markers, musty books, etc,); clean transportation (non-diesel); and a modified class schedule.

Because of the curriculum, students must change classrooms for each course. The school closest to the student's home is in an older, larger building that does not have the capacity to supply 100% fresh air for the entire school year in any of its classrooms. However, a school a few kilometres away and within the same District has the necessary capacity. The District Education Council, at the request of the student's parents, transfers the student to the other school, and provides clean transportation to bring her there.

However, the student later develops an anxiety disorder with depression on top of her environmental illness, and requests to be returned to the older, larger school with specific accommodation, including a modified classroom that will provide her with 100% fresh air.

The District has the student's medical specialist inspect the older school and all of the student's classrooms. The specialist's suggestions include removing clutter from classrooms, sitting the student at certain locations in the classrooms, posting no-scent policies in the school, clean transportation, and having the current air ventilation systems in each classroom running at full capacity whenever possible.

The District agrees to provide these accommodations, but the parents request that it modify a classroom by installing a ventilation system able to provide 100% fresh air at all times, and have teachers move from classroom to classroom and not the students. The District maintains that it is unable to do this for a variety of reasons, including disruption to other students, the inability to have teachers move from classroom to classroom due to course schedules, and its inability to provide a new ventilation system in a short period of time.

The District offers to meet the accommodations recommended by the medical specialists, or if that is not acceptable to the parents, to transfer the student back to the newer, smaller school which has the fresh air capability. The parents refuse the transfer. The Human Rights Commission closes the complaint file as reasonable accommodation had been offered and been refused by the parents.

5.2 Basic Principles of Accommodation

The Human Rights Commission considers that accommodation involves three principles: dignity, individualization and inclusion.

Students with a disability have the right to receive educational services in a manner that is **respectful of their dignity**. Human dignity encompasses individual self-respect and self-worth. It is concerned with physical and psychological integrity and empowerment. It is harmed when individuals are marginalized, stigmatized, ignored or devalued.

Education providers must fashion accommodation solutions in a manner that respects the dignity of students with a disability.⁷ Accommodations should be considered along a continuum, starting with those that most respect a student's right to privacy, autonomy and dignity. Accommodations that do not take into account a student's right to respectful and dignified treatment will not be appropriate⁸. Respect for dignity also includes taking into account **how** an accommodation is provided and the student's (and/or their parent(s)' or guardian(s)') own participation in the process.

Educators have a duty to maintain a positive educational environment for all persons they serve.⁹ Attitudes of educators towards disability issues play a major role in influencing how other students treat and relate to students with a disability. Without violating the confidentiality of students, or with the consent of their parents, teachers should make efforts to sensitize students about disability issues and to model respectful attitudes and behaviour towards students with a disability. Education providers need to address any behaviour that may be injurious to the dignity of students with a disability. See Section 7 of this guideline for information about addressing bullying and harassment.

Accommodation must be individualized. Each student's needs are unique and must be considered afresh when an accommodation request is made. At all times, the emphasis must be on the individual student and not on the category of disability. Blanket approaches to accommodation that rely solely on categories, labels and generalizations are not acceptable. Different effects of a disability and different learning styles may call for different approaches.¹⁰

⁷ *Granovsky v. Canada (Minister of Employment and Immigration),* [2000] 1 S.C.R. 703 at para.74; http://scc.lexum.umontreal.ca/en/2000/2000scc28/2000scc28.html

⁸ Law v. Canada (Minister of Employment and Immigration), [1999] 1 S.C.R. 497; http://scc.lexum.umontreal.ca/en/1999/1999rcs1-497/1999rcs1-497.html; Granovsky v. Canada (Minister of Employment and Immigration), [2000] 1 S.C.R. 703 at para.74;

http://scc.lexum.umontreal.ca/en/2000/2000scc28/2000scc28.html

⁹ Ross v. New Brunswick School District No. 15, [1996] 1 S.C.R. 825, 25 C.H.R.R. D/175;

http://scc.lexum.umontreal.ca/en/1996/1996rcs1-825/1996rcs1-825.html; see also *Education Act*, R.S.N.B. c. E-1.12, paras. 27(1)(b) & (d)) and 28(2)(c); http://www.gnb.ca/0062/acts/acts/e-01-12.htm

¹⁰ *Eaton v. Brant County Board of Education* [1997] 1 S.C.R. 241 at para. 69 (Supreme Court of Canada); http://scc.lexum.umontreal.ca/en/1997/1997rcs1-241/1997rcs1-241.html

Reasonable accommodation is fact-specific and not easily defined. The Supreme Court of Canada, in *Central Okanagan School District No. 23* v. *Renaud*,¹¹ noted that each case must be determined on its own facts to determine whether an employer or service provider has taken reasonable measures to accommodate a disability.

Example: An appropriate accommodation for a student who has a significant hearing loss and primarily uses auditory-verbal communication might be inclusion in a regular classroom with support. An appropriate accommodation for a student who is profoundly deaf and whose primary language of communication is American Sign Language or Langue des signes québécoise might be full support by a sign language interpreter in the regular classroom, access to a resource room or services in a specialized setting.

Example: A student with an environmental illness has adverse physiological reactions at her school that have a negative impact on her ability to attend school. Reasonable accommodation could include, but is not limited to, the following:

- modifying the classroom by reducing clutter, and other items to which the student has a reaction;
- installing or using a clean air ventilation system in the classroom or school;
- enforcing a "no scents" policy within the classroom and the school;
- using cleaners and paints to which the student has little or no reaction;
- reducing the student's exposure to areas of the school that cannot be modified.

Education providers must identify and accurately assess students who, due to a disability, require reasonable accommodation in order to receive an effective instruction and fully benefit from the educational service they provide. Education providers must put into place a process to assess student needs and to identify and implement strategies to meet those needs (e.g. case conferencing).

Individualized assessment includes being aware of the ways in which students with a disability are affected by also being members of other historically disadvantaged groups. These grounds may "intersect," thus producing a unique experience of discrimination.

Inclusion of students with a disability in regular classrooms is the norm. Every effort short of undue hardship must be made to provide support to assure that students with a disability can achieve educational goals while included in the regular classroom. In exceptional circumstances, it may be in the best interest of a student with a disability to receive one-on-one or small group instruction for all or part of the day. In such cases, the overarching goal should be to provide reasonable accommodations to ensure that students can return to the regular classroom as quickly as possible. Timelines should be put into place for re-assessing students to determine if they may return to regular class-

¹¹ Central Okanagan School District No. 23 v. Renaud [1992] S.C.R. 970; http://scc.lexum.umontreal.ca/en/1992/1992rcs2-970/1992rcs2-970.html

rooms. Assessments should be frequent and should be made on an individual basis. For further information about inclusion, see section 6 of this guideline.

The limits to the duty to accommodate are set out in the Meiorin Test, which is explained in section 10 and the appendix of this guideline.

5.3 Potential Consequences of a Lack of Reasonable Accommodation

The potential consequences of a lack of reasonable accommodation of a student with a disability include:

- 1. the negative effect on a student who fails to meet their educational potential;
- 2. the negative effect on the student's family;
- 3. conflict between the educational institution and the student's family;
- 4. future costs to the service provider or government; and
- 5. possible legal costs (lawyer's fees, monetary settlements, damage awards) against the service provider.

It has been well established through various educational reports (Professor Wayne MacKay's report¹² being the most recent in New Brunswick) that early intervention and remediation is the best method of addressing disability-related issues in the education sector. As well, in the *Moore*¹³ decision, the British Columbia Human Rights Tribunal found that early identification and remediation could make the difference as to whether students will be able to overcome the effect of their disability and meet their potential, both academically and socially.

Early intervention and remediation is the best method of minimizing the negative impact that a disability may have on a student's ability to learn. If it does not take place in a timely fashion, accommodating the student in an effective manner at a later stage may become more difficult, require additional resources and incur additional costs to the education provider.

Furthermore, students who are unable to meet their potential, both academically and socially, may require government support in one form or another on a long term basis, which could have been avoided had appropriate accommodation measures been taken in school.

If a human rights complaint is filed and is ultimately referred to a human rights Board of Inquiry, a lack of reasonable accommodation could result in a human rights award against the education service provider, union and/or third party service provider respon-

¹² MacKay, A. Wayne, (2006), *Connecting Care and Challenge: Tapping our Human Potential, Inclusive Education: A Review of Programming and Services in New Brunswick,* AWM Legal Consulting, 347 pp. http://www.gnb.ca/0000/publications/mackay/MACKAYREPORTFINAL.pdf

¹³ *Moore* v. *B.C.* (*Ministry of Education*) and School District No. 44, 2005 BCHRT 580; http://www.bchrt.bc.ca/decisions/2005/pdf/Moore_v_BC_(Ministry_of_Education)_and_School_District_No_44_20 05_BCHRT_580.pdf

sible for the lack of accommodation. In addition to general damages for injury to dignity, feelings and self-respect, the Tribunal in *Moore* required that the respondents pay for the complainant's private education until the completion of grade 12¹⁴.

5.4 Universal Design

Barrier prevention is preferable to barrier removal. Whenever possible, facilities, programs, policies and services should be structured and **designed at the outset to avoid any discriminatory impact** on students with a disability, instead of relying on case-by-case after-the-fact adjustments, modifications and exceptions. This approach is referred to as "inclusive design" or "universal design."

Course curriculum, delivery methods and evaluation methodologies should be designed inclusively from the outset. This may mean creative use of technology, such as putting materials online, or selecting software that is compatible with screen readers. When courses are online, web-based or CD based, accessibility issues should be addressed up-front, in the development stage.

When constructing new buildings, undertaking renovations, purchasing new computer systems, launching new web sites, designing courses, setting up programs, services, policies and procedures, education-providers should keep in mind the principles of universal design. New barriers should never be created in the construction of new facilities or in the renovation of old ones. Rather, design plans should incorporate current accessibility standards such as the Canadian Standards Association's *Accessible Design for the Built Environment*¹⁵ and the principles of universal design.

Where barriers already exist, the duty to reasonably accommodate requires education providers to make changes up to the point of undue hardship to provide equal access for students with a disability. Where it is impossible to completely remove barriers at a given point in time, then next best alternatives or temporary solutions must be explored and implemented, if to do so would not result in undue hardship.

6. INCLUSION OF STUDENTS WITH A DISABILITY

Full participation in regular school programs with non-disabled peers is the goal set explicitly by the *Education Act*¹⁶ and the *Convention on the Rights of Persons with Disabilities*¹⁷ as well as by case law under the *Canadian Charter of Rights and Freedoms*¹⁸ and the *Human Rights Code*. Education providers and teachers must be provided with sup-

¹⁴ See the appendix for a discussion of the *Moore* case

¹⁵ http://www.csa-intl.org/onlinestore/GetCatalogItemDetails.asp?mat=0000000002015478

¹⁶ Education Act, R.S.N.B. c. E-1.12, sub. 12(3); http://www.gnb.ca/0062/acts/acts/e-01-12.htm

¹⁷ Convention on the Rights of Persons with Disabilities, article 24;

http://www.un.org/disabilities/convention/conventionfull.shtml

¹⁸ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11; http://laws.justice.gc.ca/en/charter/index.html

ports sufficient to assure that students with a disability can achieve educational goals, and do so side-by-side with their peers in community schools.

In *Eaton* v. *Brant County Board of Education,* in 1997, the Supreme Court of Canada made clear that "**integration**" or inclusion "should be recognized as the norm of general application because of the benefits it generally provides …"¹⁹. The Court went on to assert that there is still a requirement to provide "special education" where it is needed to "achieve equality"²⁰.

The more or less routine placement of students with a disability into special or separate classes for students with a disability may be considered to be discriminatory as it represents a failure to accommodate, since the individual requirements of each student are not considered.

Accommodation to the point of "undue hardship" should be directed at allowing students with a disability to be included in regular schools and classrooms. The courts are quite strict as to what constitutes undue hardship, and the evidence required to prove it. For further information about undue hardship, see section 11 of this guideline.

In considering how to accommodate students with a disability, the first consideration is what supports and strategies are necessary to allow the students to be included in the regular classroom. Every effort short of undue hardship must be made to provide support so that the students may be included.

The critical factors and the process to be followed (except in case of crisis²¹) for inclusion are shown in Flow Chart A. As shown in the chart, reasonable accommodation of the student requires the educational system to support the school, the teacher and the student as follows:

- 1. To the school: to ensure the classroom and other school facilities are accessible.
- To the teacher: to support the teacher so they can teach each student appropriately. This includes professional support and planning and development of teaching strategies
- 3. To the student: to provide the accommodations required for the individual student, including teacher assistant support to follow up on the teacher's instruction where needed.

¹⁹ Eaton v. Brant County Board of Education [1997] 1 S.C.R. 241 at paras. 17 to 20 (Supreme Court of Canada); http://scc.lexum.umontreal.ca/en/1997/1997rcs1-241/1997rcs1-241.html

 $^{^{20}}$ It should be noted that, in the New Brunswick school system, special education is mainly directed at supporting inclusion.

²¹ It is understood that, in a crisis, education providers will do what is necessary to protect the safety of all students.

Flow Chart A Inclusion Process



Where all the other options fail, it may be necessary to provide some students with individual accommodation outside the regular classroom. As with all accommodations, this is based on an assessment of their needs. Such accommodations may be of a shortterm nature or for part of the regular day. They would occur in the student's neighbourhood or school area, on a one-on-one basis or as part of a small group.

Example: A grade 2 student with autism is placed in the regular classroom, but has difficulty due to the noise level and the level of the curriculum. Because of the noise level, he becomes overwhelmed and usually leaves the school unnoticed and wanders the neighbourhood unattended. As well, the curriculum causes the student to become frustrated and agitated as he struggles with his classroom assignments. Specialists recommend that the student receive the assistance of a Teacher's Assistant to ensure that he gets extra help with his assignments and does not leave the classroom unattended. The TA also takes the student to a quiet room when he starts to react to the noise. The student is also assessed to determine the appropriate Special Education Program and whether or not he requires a modified program or an accommodated program.

The need for significant periods of time outside the regular class and away from peers in a one-on-one or small group basis should occur only after reasonable efforts short of undue hardship have been made to provide needed support in Options #1 to # 4 as shown in Flow Chart A. As noted above, the point of departure is that these interventions occur in the child's neighbourhood or natural school and that " ... this should occur for a limited time period and with a goal oriented plan focused on returning the child to his/her regular class. "²²

7. BULLYING AND HARASSMENT OF STUDENTS WITH A DISABILITY

For students with a disability to fully benefit from inclusion, their emotional, social and safety needs must be met. **Education service providers must maintain a safe learn-***ing environment for students,* free from bullying and harassment and must take immediate steps to intervene when bullying or harassment may be taking place. This is required not only by the underlying educational rationale of inclusion, but by human rights case law²³.

Students who are harassed are entitled to the *Code*'s protection where the harassment is based on one of the grounds covered under the *Code*. Education providers are responsible when staff harass students based on any of the *Code*'s grounds. They are also responsible when staff know or ought to know that a student is being har-

²² New Brunswick, Department of Education, "1988 Working Guidelines on Integration", 1988, 13 pp. at page 11; http://www.gnb.ca/0000/publications/ss/Integration-guidelines.pdf

²³ For students in public schools, the *Education Act* and its regulations also set out specific duties of teachers and principals in relation to discipline and positive learning environments; *Education Act*, R.S.N.B. c. E-1.12; http://www.gnb.ca/0062/acts/acts/e-01-12.htm

assed by other students²⁴ based on any of the *Code*'s grounds. They must take effective individualized and systemic steps to prevent and remedy harassment.

Example: A student with Tourette's syndrome is repeatedly taunted and teased by a group of students for no specific identifiable reason apparent to teachers. The same group excludes her from recess activities, stating that she is "different" and "weird". It may be inferred from these particular circumstances that the treatment is due to the student's disability even though none of the students ever made a direct reference to her disability. As a result of this harassment, the student's opportunity to access the educational program is impaired.

Example: A student with a mental disability is bullied by some of the other students. They call him derogatory names related to his disability and physically push and hit him because of his disability. The student and his parents have informed school personnel of this and stressed that the bullying needs to stop. The Province and its personnel are under an obligation to adequately address the situation, since bullying based on one of the grounds (mental disability) covered by the *Human Rights Code* is discrimination and is a violation of the *Code*. The school may attempt to resolve the issue by:

- identifying and speaking with the offending students and their parents to advise that this behaviour will not be tolerated and what the consequences may be if it continues;
- working with the offending students to help them develop empathy and appropriate social skills;
- following through with the appropriate action if the behaviour continues;
- providing the bullied student with a mechanism for reporting the bullying as it occurs, thereby allowing for immediate intervention by school personnel; and
- developing an anti-bullying program and giving presentations to the student population on this issue.

Students who are a target of harassment may be in a vulnerable situation. As such, in situations where the conduct is or should have been known to be unwelcome, there is no requirement that they formally speak out against the behaviour before a violation of the *Code* can be considered to have taken place.

Education service providers **must take steps to prevent harassment, such as implementing programs to oppose bullying and celebrate all differences**. In *Jubran* v. *Board of Trustees*²⁵, the British Columbia Human Rights Tribunal found a school board

²⁴ Jubran v. Board of Trustees, [2002] B.C.H.R.T. 10,

http://www.bchrt.bc.ca/decisions/2002/pdf/jubran_v_board_of_trustees_2002_bchrt_10.pdf (British Columbia Human Rights Tribunal); affirmed [2005] B.C.J. No. 733, 2005 BCCA 201, http://www.courts.gov.bc.ca/Jdbtxt/CA/05/02/2005BCCA0201err2.htm (British Columbia Court of Appeal)

²⁵ Jubran v. Board of Trustees, [2002] B.C.H.R.T. 10,

http://www.bchrt.bc.ca/decisions/2002/pdf/jubran_v_board_of_trustees_2002_bchrt_10.pdf (British Columbia Hu-

liable for discriminatory harassment by students toward another student. School personnel had responded to the situation with detentions and suspensions of the individual harassers, and they had meetings with the parents. However, they had failed to implement a school-wide anti-bullying programme early enough to stop the harassment experienced by the complainant. This decision was affirmed by the British Columbia Court of Appeal in April of 2005.

An anti-harassment policy can be an effective means of preventing harassment, provided students and staff are well informed about it. In fact, the Department of Education has adopted policies that address harassment and other non-professional conduct by adults and harassment and other problem behaviours by students.

Please also refer to the following section when bullying or harassing behaviour is a manifestation of a student's disability.

8. DISCIPLINE OF STUDENTS WITH A DISABILITY

In some cases, discipline policies, especially zero-tolerance policies, may have an adverse effect on students with a disability.

All students with a disability, even those whose behaviour is disruptive or constitutes bullying or harassment, are entitled to receive accommodation up to the point of undue hardship. Education providers have a duty to assess each student with a disability individually before imposing disciplinary sanctions.

Educators should attempt to determine whether the behaviour in question is a manifestation of the student's disability by considering:

- o formal assessments and evaluations of the student,
- o relevant information supplied by the student or the student's parents,
- o observations of the student,
- the student's accommodation plan,
- whether the accommodations provided for in the student's accommodation plan were appropriate, and whether they were being provided consistent with the plan,
- whether the student's disability impaired his or her ability to understand the impact and consequences of the behaviour subject to disciplinary action,
- whether the student's disability impaired his or her ability to control the behaviour subject to disciplinary action, and
- whether the student has undetected disability-related needs that require accommodation.

Once it has been determined that a student is prone to problem behaviour that is a manifestation of a disability, this should be communicated to school personnel who may

be involved in implementing discipline policies in relation to that student, so that they may take this into consideration and make reasonable accommodation.

With respect to behaviour that is a manifestation of the student's disability, educators must consider a range of strategies to address disruptive behaviour. Such strategies will include reassessing and, where necessary, modifying the student's accommodation plan, providing additional supports, implementing alternative learning techniques, and other forms of positive behavioural intervention.

Again, with respect to behaviour that is a manifestation of the student's disability, education providers should consider **progressive discipline** instead of mandatory suspensions should consider **mitigating factors** prior to suspending students and should provide **alternative education opportunities** for suspended students.

Did You Know: Other jurisdictions have adopted safeguards to protect students with a disability from being disciplined for behaviour that is disability-related. For example, as a result of human rights complaints in Ontario, the Ministry of Education and a number of school boards have agreed to revise the application of their safe-schools policies and to take several other steps²⁶.

There may be rare situations in which a student's behaviour, even where it is a manifestation of a disability, poses a health and safety risk to the student, to other students and/or to teachers and other staff. While an education provider in this type of situation continues to have a duty to accommodate the student up to the point of undue hardship, legitimate health and safety concerns may need to be addressed. In some situations, placement in a mainstream classroom may not be the most appropriate accommodation. This is discussed in sections 6 and 11.4 of this guideline.

Students must not be disciplined for absences resulting from a disability. Education providers must reasonably accommodate students who miss classes, assignments and tests because they are too ill to attend school or because they need to meet health professionals, take medical tests or undergo therapy, counselling, rehabilitation or other treatments as a result of a physical or mental disability. Education providers may need to schedule a separate test for a student or extend deadlines for assignments. However, students with a disability may be required to meet minimum learning outcomes even when their ability to meet them may be affected by absenteeism due to a disability, provided their disability was accommodated short of undue hardship.

Example: An education provider's policy requires students to fulfil a minimum number of in-class hours in order to receive credit for a course. However, in response to the needs of students whose disabilities make it difficult or impossible for them to attend school full-time, the policy states that the attendance requirements may be modified where appropriate. Education providers must also reasonably ac-

²⁶ http://www.ohrc.on.ca/en/resources/news/backgroundedsettlement
commodate students who cannot complete tests or assignments in the standard time period due to a disability.

Students with a behavioural problem that is a manifestation of a disability have a responsibility to take action to mitigate the problem.

If a student's behaviour is not a manifestation of a disability, that is, where there is no causal relationship between the student's disability and the behaviour in question, then that student would be subject to the normal consequences of his or her misconduct.

9. **RESPONSIBILITIES**

9.1 Responsibilities of Education Providers

Education service providers have a responsibility²⁷ to:

- 1. review the accessibility of educational institutions as a whole, including all educational services;
- 2. when they design and develop new or revised facilities, services, policies, processes, courses, programs or curricula, do so while keeping in mind the needs of persons with a disability in mind;
- 3. ensure that collective agreements do not conflict with the need to reasonably accommodate students with a disability short of undue hardship;
- 4. ensure that staff have appropriate training on the duties to reasonably accommodate and to prevent harassment/bullying, and on practices and strategies to implement these duties, including inclusion of students with a disability in regular classrooms;
- 5. put into place a process to assess student needs and to identify and implement strategies to meet those needs (e.g. case conferencing);
- 6. put in place a process for the continual reassessment of the programme of any students who has been placed outside the regular classroom; the process should also provide for the reassessment of students who have been returned to the regular classroom;
- advise students, or their parent(s)/guardian(s), of available accommodations and support services, and the process by which these resources may be accessed;
- 8. deal with accommodation requests in a timely manner;
- 9. identify and accurately assess students who, due to a disability, require reasonable accommodation in order to receive effective instruction and fully benefit from the educational service they provide;
- 10. take an active role in ensuring that alternative approaches and possible accommodation solutions are investigated, and canvass various forms of possi-

²⁷ In addition, for public schools, there are specific responsibilities set out under the *Education Act* and its regulations; see Education Act, R.S.N.B. c. E-1.12; http://www.gnb.ca/0062/acts/acts/e-01-12.htm

ble accommodation and alternative solutions, as part of the duty to reasonably accommodate;

- 11. prepare, maintain and follow a special education program for students with a disability²⁸;
- 12. take steps to include students with a disability in class, extra-curricular and co-curricular activities;
- 13. obtain expert opinion or advice where needed, and bear the costs of any required disability-related information or assessment;
- 14. co-operate with any experts whose assistance is required;
- 15. base decisions on objective and quantifiable, not impressionistic, information²⁹;
- 16. maximize a student's right to privacy and confidentiality, for example by sharing information regarding the student's disability only with those directly involved in the accommodation process;
- 17. limit requests for information to those reasonably related to the nature of the need or limitation, and only for the purpose of facilitating access to educational services;
- 18. maintain proper documentation of all aspects of the student's academic and special needs assessments and progress;
- 19. ensure that educational environments are welcoming and that all students treat one another with respect; take immediate remedial action in situations where bullying and harassment may be taking place.

9.2 Responsibilities of Unions, Professional Associations and Third Party Educational Service Providers

Unions (see section 11.5 for more information), professional associations, and third party educational service providers³⁰ are also part of the accommodation process. As a result, they are required to:

- 1. take an active role as partners in the accommodation process;
- 2. facilitate accommodation efforts;
- 3. ensure that collective agreements do not conflict with the need to reasonably accommodate students with a disability short of undue hardship;
- 4. interpret and apply collective agreements, classifications, seniority lists, bargaining unit certifications and service contracts in a way that permits reasonable accommodation of students with a disability short of undue hardship);
- 5. deal with accommodation requests in a timely manner; considering the extent and complexity of the accommodation;

²⁸ B.C. v. New Brunswick (Department of Education) [2004] N.B.H.R.B.I.D. No. 2, No. HR-003-01

²⁹ British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights), [1999] 3 S.C.R. 868 at para. 41 ("Grismer case"); http://scc.lexum.umontreal.ca/en/1999/1999rcs3-868/1999rcs3-868.html 30 Third party educational service providers include government departments and agencies – like the regional health authorities that provide speech and other therapies; Family and Community Services that provides social work; and Mental Health clinics might provide counselling services. Third party educational service providers also include non-governmental service providers, such as companies that provide IT or transportation services.

- 6. ensure that members and staff have appropriate training on the duties to reasonably accommodate and to prevent harassment/bullying, and on practices and strategies to implement these duties, including inclusion of students with a disability in regular classrooms;
- 7. maximize a student's right to privacy and confidentiality, for example by sharing information regarding the student's disability only with those directly involved in the accommodation process;
- 8. limit requests for information to those reasonably related to the nature of the need or limitation, and only for the purpose of facilitating access to educational services;
- 9. ensure that educational environments are welcoming and that all students treat one another with respect; take immediate remedial action in situations where bullying and harassment may be taking place;
- 10. co-operate with any experts whose assistance is required;
- 11. fulfill agreed upon responsibilities, as set out in the accommodation plan.

9. 3 Responsibilities of Students and Parents

Students with a disability (or their parent/guardian) have the right to expect reasonable accommodation to the point of undue hardship from education service providers. They also have corresponding responsibilities to:

- 1. advise education providers of the need for accommodation related to a disability;
- 2. make their needs known to the best of their ability, in order that education providers may make the requested accommodation31;
- 3. answer questions or provide information regarding relevant restrictions or limitations, including information from health care professionals, where appropriate and as needed;
- 4. participate in discussions regarding possible accommodation solutions;
- 5. co-operate with any experts whose assistance is required;
- 6. fulfill agreed upon responsibilities, as set out in the accommodation plan;
- 7. work with education providers on an ongoing basis to manage the accommodation process; and
- 8. advise education providers of difficulties they may be experiencing in accessing educational life, including problems with arranged accommodations.

10. MEIORIN TEST

The limits to the duty to accommodate are set out in what is called the Meiorin Test, which was spelled out by the Supreme Court of Canada in 1999 in the Meiorin³² and Grismer³³ cases.

³¹ B.C. v. New Brunswick (Department of Education) [2004] N.B.H.R.B.I.D. No. 2, No. HR-003-01

³² British Columbia (Public Service Employee Relations Commission) v. BCGSEU [1999] 3 S.C.R. 3 ("Meiorin case"); http://scc.lexum.umontreal.ca/en/1999/1999rcs3-3/1999rcs3-3.html

The Meiorin Test has three parts. To justify a practice or policy that results in a discriminatory level of service, a service provider must show that all three Meiorin conditions have been met, that is:³⁴

- (1) it adopted the standard for a purpose or goal that is **rationally connected to the function** being performed;
- (2) it adopted the standard in **good faith**, in the belief that it is necessary for the fulfillment of the purpose or goal; and
- (3) the standard is **reasonably necessary** to accomplish its purpose or goal, in the sense that the defendant cannot accommodate persons with the characteristics of the claimant without incurring **undue hardship**.

When applying the Meiorin Test to an educational service, the following questions correspond to the above three requirements:

- 1. (a) What is the purpose of the education policy, rule or standard—safety, efficiency, other?
 - (b) Is the policy, rule or standard a logical way to meet that purpose?
 - (c) Does it set requirements that are irrelevant or that are higher than necessary to achieve that purpose?
 - (d) Does it arbitrarily exclude groups of students with a disability?
- 2. (a) What were the circumstances surrounding the adoption of the policy, rule or standard by the education service provider?
 - (b) When was the policy, rule or standard created, by whom, and why?

(c) What other considerations were included in the development of the policy, rule or standard?

- 3. (a) Is the policy based on facts or unsupported assumptions made by the education service provider?
 - (b) Does the policy adversely affect some groups of students more than others?
 - (c) Has the policy been designed to minimize its discriminatory effect on students?

(d) Has the education service provider considered alternatives, such as individual assessment of students, staff and student support, and staff training?

(e) Would accommodation amount to undue hardship for the education service provider?

For more information about applying the Meiorin Test in the educational context, see the *Moore* case in the Appendix.

 ³³ British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights), [1999] 3
S.C.R. 868 ("Grismer case"); http://scc.lexum.umontreal.ca/en/1999/1999rcs3-868/1999rcs3-868.html

³⁴ British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights), [1999] 3 S.C.R. 868at para. 20 ("Grismer case"); http://scc.lexum.umontreal.ca/en/1999/1999rcs3-868/1999rcs3-868.html

11. LIMITS TO THE DUTY TO ACCOMMODATE: UNDUE HARDSHIP

11.1 Elements of Undue Hardship

The courts and boards of inquiry have intentionally set standards that, while demanding, are flexible and adaptable to the circumstances of each case. The Supreme Court of Canada has emphasized also that reasonable accommodation and undue hardship are not independent criteria but alternate ways of expressing the same concept.³⁵

Accommodation would amount to undue hardship only if it would alter the essential nature or substantially affect the viability of the service.

What constitutes undue hardship will vary significantly from one case to the next depending on a range of factors, such as the size of the employer, the economic situation, market conditions, the climate of labour relations, the nature of the work or the reliability of recommended technological or adaptive devices.

In its decision in *Meiorin³⁶*, the Supreme Court of Canada cited with approval its earlier decision in *Renaud* to emphasize again that "[t]he use of the term 'undue' infers that some hardship is acceptable; it is only 'undue' hardship that satisfies this test". The Court went on to make the following comments on how to determine the point of undue hardship:

Among the relevant factors are the financial cost of the possible method of accommodation, the relative interchangeability of the workforce and facilities, and the prospect of substantial interference with the rights of other employees. ... The various factors are not entrenched, except to the extent that they are expressly included or excluded by statute. In all cases, ... such considerations "should be applied with common sense and flexibility in the context of the factual situation presented in each case".³⁷

While several factors may be considered when establishing undue hardship, the most commonly recognized factors are:

- excessive costs,
- serious risk to health or safety, and
- impact on other people and on programs.

These factors are discussed in sections 11.3, 11.4 and 11.5 of this guideline.

³⁵ Central Okanagan School District No. 23 v. Renaud, [1992] 2 S.C.R. 970;

http://scc.lexum.umontreal.ca/en/1992/1992rcs2-970/1992rcs2-970.html

³⁶ British Columbia (Public Service Employee Relations Commission) v. BCGSEU [1999] 3 S.C.R. 3 at para. 62 ("Meiorin case"); http://scc.lexum.umontreal.ca/en/1999/1999rcs3-3/1999rcs3-3.html

³⁷ British Columbia (Public Service Employee Relations Commission) v. BCGSEU [1999] 3 S.C.R. 3 at para. 63 ("Meiorin case"); http://scc.lexum.umontreal.ca/en/1999/1999rcs3-3/1999rcs3-3.html

Another factor is the conduct of the student with a disability and his or her parents. As explained in section 9.3 of this guideline, the student and parent must cooperate in the accommodation process. A failure to cooperate may impose an undue hardship on the education provider and lead to the dismissal of a human rights complaint. In the *Renaud* case, the Supreme Court of Canada said that there is a duty on a complainant to assist the service provider or employer in securing an appropriate accommodation. The Court said³⁸:

"When an employer has initiated a proposal that is reasonable and would, if implemented, fulfill the duty to accommodate, the complainant has a duty to facilitate the implementation of the proposal. If failure to take reasonable steps on the part of the complainant causes the proposal to founder, the complaint will be dismissed. The other aspect of this duty is the obligation to accept reasonable accommodation... The complainant cannot expect a perfect solution. If a proposal that would be reasonable in all of the circumstances is turned down, the employer's duty is discharged."

11.2 Proving Undue Hardship

Education providers have the onus of proof to claim the undue hardship defence. Students requesting accommodation do not have to prove that the accommodation can be accomplished without undue hardship. **The evidence required to prove undue hardship must be objective, real, direct and, in the case of cost, quantifiable**. Education providers must provide facts, figures, and scientific data or opinion to support a claim that the proposed accommodation in fact causes undue hardship. A mere statement, without supporting evidence, that the cost or risk is "too high" based on impressionistic views or stereotypes will not be sufficient.

Objective evidence includes, but is not limited to:

- financial statements and budgets,
- scientific data, information and data resulting from empirical studies,
- expert opinion,
- detailed information about the activity and the requested accommodation, and
- information about the conditions surrounding the activity and their effects on the person or group with a disability.

Medical practitioners, educators, psychologists and parents must work together to determine the appropriate accommodation. The determination should be based primarily on the opinion of experts as to what is in the best interest of the student, and this may not coincide with the wishes of the parent(s) or student. With respect to the programme put in place for a student, an expert medical opinion without input and guidance from an educational and/or psychological perspective is insufficient.

³⁸ Central Okanagan School District No. 23 v. Renaud [1992] S.C.R. 970 at para. 44; http://scc.lexum.umontreal.ca/en/1992/1992rcs2-970/1992rcs2-970.html

Example: A medical doctor "prescribed" that a Teacher Assistant be provided for a student with a disability. School officials decided that an educational perspective was needed before making this determination. They consulted a multidisciplinary team before deciding whether a Teacher Assistant was required.

It is important that educational service providers document their efforts to accommodate. Evidence of long term planning to improve accommodation will greatly assist in supporting a defence of undue hardship. One of the critical questions is whether the decision maker has explored all other reasonable and less discriminatory options.

11.3 Excessive Costs

While many forms of accommodation are not costly, other forms of accommodation may be excessively costly. However, **a high standard applies** when arguing that undue hardship would result due to excessive costs.

The Supreme Court of Canada has said that, "One must be wary of putting too low a value on accommodating the disabled. It is all too easy to cite increased cost as a reason for refusing to accord the disabled equal treatment".³⁹

What constitutes excessive costs depends in part on the size and budget of the educational institution in question. The relevant institution in the case of public schools is the provincial government and the relevant budget is the provincial budget. In the *Moore* case, the British Columbia Human Rights Tribunal said⁴⁰:

"The funding arrangements for education are similar to those for hospitals in *El-dridge*.... In *Eldridge*, it was the government that was found not to have reasonably accommodated the needs of the deaf by failing to fund interpretation services.

"...In my view, the responsibility for the provision of educational services in B.C. falls on the Province. The fact that the Province has chosen to fulfill that responsibility by creating a statutory scheme which gives school boards responsibility for the delivery of the service does not change that responsibility."

For excessive costs to justify a failure to accommodate a student in a public school, they must be so high as to create an undue hardship to the provincial government.

Education providers cannot use limited resources or budgetary restrictions as a defence to the duty to accommodate without first meeting the formal test for undue hardship based on costs. Further, education providers are not to decide which accommodations

³⁹ British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights), [1999] 3 S.C.R. 868 at para. 41 ("Grismer case"); http://scc.lexum.umontreal.ca/en/1999/1999rcs3-868/1999rcs3-868.html

⁴⁰ *Moore* v. *B.C. (Ministry of Education) and School District No. 44*, 2005 BCHRT 580, para. 706 & 714; http://www.bchrt.bc.ca/decisions/2005/pdf/Moore_v_BC_(Ministry_of_Education)_and_School_District_No_44_20 05_BCHRT_580.pdf

are most appropriate for students based on financial considerations or budgetary constraints. Whether an accommodation is "appropriate" is completely distinct and separate from whether the accommodation would result in "undue hardship." If the accommodation meets the student's needs and does so in a way that most respects dignity, then a determination can be made as to whether or not this "most appropriate" accommodation would result in undue hardship.

In determining whether a financial cost would "alter the essential nature or substantially affect the viability" of the educational institution, consideration will be given to:

- The size of the institution what might prove to be a cost amounting to undue hardship for a small educational institution (e.g. a small private school) will not likely be one for a larger educational institution (e.g. the provincial government, in the case of public schools);
- The size of the school building;
- Interchangeability of workforce;
- Interchangeability of facilities and ease with which facilities can be adapted;
- Whether costs can be recovered in the normal course of operation;
- Whether other divisions, departments, etc. of the educational institution can help to absorb part of the costs;
- Whether the costs can be phased in over a few years. This should be considered only after the accommodation provider has demonstrated that the most appropriate accommodation could not be accomplished immediately;
- The possibility of setting aside a certain percentage of money per year to be placed in a reserve fund to be used for accommodation issues. Again, this should be considered only after it has been demonstrated that the most appropriate accommodation could not be accomplished immediately;
- Whether the educational programs and services for all students would be substantially and permanently altered. For example, would a district education council be forced to cancel its music programs to fund an accommodation?

Where the most appropriate accommodation would result in undue hardship, education providers should consider "next best" alternatives, or interim measures while the most appropriate accommodation is being phased in or implemented at a later date.

If an accommodation exceeds an education provider's pre-determined special education budget, the education provider must look to its global budget, unless to do so would cause undue hardship. Costs of accommodation must be distributed as widely as possible within the institution responsible for accommodation so that no single school or department is disproportionately burdened with the costs of accommodation. The appropriate basis for evaluating the costs is based on the budget of the institution as a whole⁴¹, not the department in which the student with the disability has requested an accommodation.

⁴¹ In the case of public schools in New Brunswick, the relevant institution is the entire provincial government. *Moore* v. *B.C. (Ministry of Education) and School District No.* 44, 2005 BCHRT 580, para. 708, 713-714;

Where education providers receive funding from government to promote accessibility and meet the needs of students with a disability, they should track accommodation data and alert the government to any funding deficiencies that exist.

Example: A student needs a teacher assistant. However, her parent is informed that all the teacher assistants have full caseloads and are unable to take an additional student without withdrawing support from an existing student. The parent contacts the District Education Council. It determines that the entire budget for Teacher Assistants has been committed, but a surplus is likely in the transportation budget. It uses that anticipated surplus to hire an additional Teacher Assistant, and advises the Department of Education of the shortfall in funding for Teacher Assistants.

Larger organizations, in particular governments, may be in a better position to set an example or provide leadership in accommodating persons with a disability. Accommodation costs will likely be more easily absorbed by larger organizations.

The relevant institution for public schools is the government of New Brunswick⁴² since the government is required to ensure that district education councils have access to sufficient funding to ensure equal access to education. The councils, in turn, have a responsibility to provide adequate funding to schools to enable the provision of accommodations.

Tax deductions and other government benefits flowing from the accommodation must also be considered.

It should be noted that implementing universal design principles during building construction can avoid potentially expensive after-the-fact adaptations.

11.4 Serious Risk to Health or Safety

Maintaining a safe learning environment for students, school staff and educators alike is an important objective. Health and safety issues will arise in various educational contexts and have the potential to affect individual students with a disability, other students, educators, and school staff. Depending on the nature and degree of risk involved, it may be open to education providers to argue that accommodating a student with a disability would amount to an undue hardship.

http://www.bchrt.bc.ca/decisions/2005/pdf/Moore_v_BC_(Ministry_of_Education)_and_School_District_No_44_20 05_BCHRT_580.pdf

⁴² *Moore* v. *B.C. (Ministry of Education) and School District No. 44*, 2005 BCHRT 580, para. 708, 713-714; http://www.bchrt.bc.ca/decisions/2005/pdf/Moore_v_BC_(Ministry_of_Education)_and_School_District_No_44_20 05_BCHRT_580.pdf

Where a health and safety requirement creates a barrier for a student with a disability, the education provider should assess whether the requirement can be modified or waived. However, modifying or waiving health and safety requirements may create risks that have to be weighed against the student's right to equality.

It is important to substantiate the actual degree of risk in question, rather than act on inaccurate or stereotypical perceptions that may have little to do with a student's actual limitations.

Example: A teacher has reservations about allowing a student who uses a wheelchair to accompany the class on a field trip to a local zoo because she believes that it will be too dangerous. The principal makes further inquiries, including contacting the zoo's management, and determines that most of the facility is accessible, and that patrons who use wheelchairs and other motorized devices regularly visit the zoo without incident.

Where a student is placed in an educational setting outside the regular classroom due to health and safety risks, the student is entitled to periodic reassessment to determine whether a return to the regular educational program is appropriate. The student should continue to be re-assessed after being returned to the regular classroom.

Example: A student with bi-polar disorder is unable to attend school due to uncontrollable and violent outbursts associated with her disability. After a period of medical treatment, she is able to manage her disability effectively. At this point, the school arranges to meet with the student and reassess her accommodation needs. As a result, the student is returned to the regular classroom, and later reassessed. The duty to reasonably accommodate is dynamic and ongoing and must be responsive to changes in the nature of a student's disability.

An education provider can determine whether modifying or waiving a health or safety requirement creates a significant risk by considering the following:

- Is the student (or his or her parents) willing to assume the risk where the risk is solely to his or her own health or safety? Risk is evaluated after all accommodations have been made to reduce it.
- Would changing or waiving the requirement be reasonably likely to result in a serious risk to the health or safety of other students, educators or school staff? Risk is evaluated after all accommodations have been made to reduce it.
- What other types of risks are assumed within the institution or sector, and what types of risks are tolerated within society as a whole?

In evaluating the seriousness or significance of risk, the following factors may be considered:

- The nature of the risk: What could happen that would be harmful?
- The severity of the risk: How serious would the harm be if it occurred?
- The probability of the risk: How likely is it that the potential harm will actually occur? Is it a real risk, or merely hypothetical or speculative? Could it occur frequently?
- The scope of the risk: Who will be affected by the event if it occurs?

If the potential harm is minor and not very likely to occur, the risk should not be considered serious. If there is a risk to public safety, consideration will be given to the increased numbers of people potentially affected and the likelihood that the harmful event may occur.

Parents of a student with a disability should be consulted in decisions that concern the safety of their child. They may need to sign a consent form.

Where a student with a disability engages in behaviour that impacts upon the well-being of others, it may be open to education providers to argue that to accommodate that student would cause undue hardship on the basis of health and safety concerns, specifically that the accommodation would pose a risk to public safety. However, the seriousness of the risk will be evaluated only after accommodation has been provided and only after appropriate precautions have been taken to reduce the risk. It will be up to the education provider to provide objective and direct evidence of the risk. Suspicions or impressionistic beliefs about the degree of risk posed by a student, without supporting evidence, will not be sufficient.

A claim of undue hardship must stem from a genuine interest in maintaining a safe learning environment for all students, rather than as a punitive action. Even where a student poses a risk to him or herself or the safety of others, an education provider still has a duty to canvass other accommodation options, including separate services and increased staff support, where possible and appropriate.

Ultimately, education providers must balance the rights of students with a disability with the rights of others. There may be situations where a student poses a health and safety risk to him or herself or to others that would amount to an undue hardship, or where an otherwise appropriate accommodation is impossible to implement in the particular circumstances. However, it is important that education providers not rush to such a conclusion. Further training for staff, or further supports for the student may resolve the issue. The accommodation process must be fully explored, to the point of undue hardship.

11.5 Impact on Other People and on Programs

In the Grismer case, Judge McLachlin of the Supreme Court of Canada stated:

"This decision stands for the proposition that those who provide services subject to the *Human Rights Code* must adopt standards that accommodate people with disabilities where this can be done **without sacrificing their legitimate objectives** and without incurring undue hardship.⁴³"

Provided an appropriate process has been followed and all other options have been eliminated, educational providers may also refuse an accommodation if it would create an undue hardship as a result of its impact on other students, on staff or on the general public. The proposed accommodation must not significantly interfere with the rights of others.

Example: A student in grade 6 diagnosed with ADHD has a serious behavioural problem. His classroom teacher finds it impossible to deal with him and teach other students. When the teacher receives the support of a school team in developing a "plan" for working with the student, as well as the help of a teacher assistant for several hours a day, she is able to keep the student in class and teach effectively.

Unions must cooperate in the accommodation process to the point of undue hardship⁴⁴, and are liable under the *Human Rights Code* if they fail to do so. Clauses in collective agreements that conflict with the *Human Rights Code* are invalid. Human rights legislation sets a standard below which parties cannot contract. The substantive rights and obligations of human rights laws are part of each collective agreement, and a labour grievance arbitrator has the power to enforce them as if they were part of a collective agreement.⁴⁵

This may mean that a union may need to allow a member (e.g. with special skills or other qualifications required for accommodating a student with a disability) to perform tasks that are outside their classification or bargaining unit, or to occupy a position to which they would not be normally be entitled due to their bargaining unit or lack of seniority.

However, according to the Meiorin Test, the impact on unions and their members is one of several factors that must be considered when determining whether an accommodation would cause undue hardship.

⁴³ British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights), [1999] 3 S.C.R. 868 at para. 44 ("Grismer case"); http://scc.lexum.umontreal.ca/en/1999/1999rcs3-868/1999rcs3-868.html

⁴⁴ *Central Okanagan School District No. 23* v. *Renaud*, [1992] 2 S.C.R. 970; http://scc.lexum.umontreal.ca/en/1992/1992rcs2-970/1992rcs2-970.html

⁴⁵ Parry Sound (District) Social Services Administration Board v. OPSEU, Local 324, [2003] 2 S.C.R. 157 (Supreme Court of Canada); http://scc.lexum.umontreal.ca/en/2003/2003scc42/2003scc42.html

Example: A school determines that a middle school student with autism who is moving on to high school would be best served if his existing teacher assistant was transferred to the high school because the assistant has specialized training relating to autism. However, the teacher assistant refuses the reassignment, citing her collective agreement, which gives teacher's assistants the right to select work locations based on seniority. According to the Meiorin Test, the impact on the teacher assistant and the labour union is one of several factors (including the availability of other teacher assistants with similar training) that must be considered when determining whether not transferring the teacher assistant would constitute undue hard-ship.

A minor disruption of a collective agreement is not undue hardship, but a substantial departure from the normal operation of a collective agreement may amount to undue hardship.

Educational service providers who claim undue hardship may cite the failure of a union to cooperate in accommodation as a factor.

12. FILING A COMPLAINT

Any person claiming to be a victim of discrimination (including a failure to reasonably accommodate) or harassment may file a complaint with the Human Rights Commission. If the complaint is made in bad faith, or if it was filed more than 12 months after the incident of discrimination, the Commission may decide not to deal with it.

There is no charge for filing a complaint, and staff members of the Commission are available to discuss potential complaints over the telephone or in person. Persons who have any questions or require further information regarding the *Code* are encouraged to contact the Commission.

The human rights complaint process usually involves investigation and mediation. The parties are encouraged to resolve disputes through mediation. Only a few cases are referred to a tribunal for a Human Rights Board of Inquiry. Damages and other remedies may be ordered by a Board of Inquiry against education providers that fail to reasonably accommodate a student with a disability.

In the case of harassment, discrimination and other non-professional conduct by adults in public schools, a separate complaint process is currently provided by a Department of Education policy. A complaint can be filed with the Human Rights Commission whether or not a complaint was filed under that policy.

13. FOR MORE INFORMATION

For further information about the *Human Rights Code* or this guideline, please contact the Commission at 1-888-471-2233 toll-free within New Brunswick, or at 506-453-2301. TTD users can reach the Commission at 506-453-2911.

The Commission has also published the following related publications:

- Guideline for BFOQ's and BFQ's and the Duty to Accommodate (Adopted November 9, 2001); www.gnb.ca/hrc-cdp/e/Guideline-BFOQs-BFQs-Duty-Accommodate-New-Brunswick.pdf
- Guideline on Accommodating Physical and Mental Disability at Work (Adopted April 22, 2004); www.gnb.ca/hrc-cdp/e/Guideline-on-Accommodating-Disability-at-Work.pdf
- Accommodation at Work; Assuring the Continued Employment of New Brunswickers after a Permitted Leave or Workplace Accident; Rights, Obligations and Best Practices under the Workers' Compensation Act, Employment Standards Act and Human Rights Act (October 2006); www.whscc.nb.ca/docs/DTAAccommodationatwork e.pdf

Additional information is available at the Commission's website at www.gnb.ca/hrc-cdp or e-mail hrc.cdp@gnb.ca.

Appendix

Legal Framework

INTERPRETATION PRINCIPLES

The Human Rights Commission gives the Human Rights Code a broad and purposive interpretation consistent with international law, the Canadian Charter of Rights and *Freedoms*⁴⁶, and the approach taken by courts and tribunals in Canada with respect to the interpretation of human rights legislation.

The Commission is guided in part by international human rights case law and the treaty obligations that apply to New Brunswick as a result of international human rights treaties that have been ratified by Canada, such as the Convention on the Rights of the Child⁴⁷ and the Convention on the Rights of Persons with Disabilities⁴⁸.

The courts have recognized that human rights laws have a guasi-constitutional nature and take precedence over ordinary laws in case of conflict,⁴⁹ and must be given a broad and purposive interpretation. Should there be a conflict between the Human Rights *Code* and the *Education Act* and its regulations, the *Code* prevails.

Human rights legislation sets a standard below which parties cannot contract. The substantive rights and obligations of human rights laws are part of each collective agreement, and a labour grievance arbitrator has the power to enforce them as if they were part of a collective agreement.⁵⁰

CASE LAW: THE MOORE CASE

The Moore v. B.C. (Ministry of Education) and School District No. 44⁵¹ case is one of the leading cases on accommodation of students with a disability. It was decided by the British Columbia Human Rights Tribunal in 2005.

⁴⁸ Convention on the Rights of Persons with Disabilities;

⁴⁹ Newfoundland Association of Public Employees v. Newfoundland (Green Bay Health Care Centre), [1996]

⁴⁶ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11.; http://laws.justice.gc.ca/en/charter/index.html ⁴⁷ Convention on the Rights of the Child; http://www.unhchr.ch/html/menu3/b/k2crc.htm

http://www.un.org/disabilities/convention/conventionfull.shtml

² S.C.R. 3, at para. 20 (Supreme Court of Canada); http://scc.lexum.umontreal.ca/en/1996/1996rcs2-3/1996rcs2-3.html

⁵⁰ Parry Sound (District) Social Services Administration Board v. OPSEU, Local 324, [2003] 2 S.C.R. 157 (Supreme Court of Canada); http://scc.lexum.umontreal.ca/en/2003/2003scc42/2003scc42.html ⁵¹ *Moore* v. *B.C. (Ministry of Education) and School District No.* 44, 2005 BCHRT 580;

http://www.bchrt.bc.ca/decisions/2005/pdf/Moore_v_BC_(Ministry_of_Education)_and_School_District_No_44_20 05_BCHRT_580.pdf

In that case, the complainant had alleged that the respondents failed to identify his son's disability, dyslexia, soon enough and had failed to provide him with the support he required to properly access educational services. He also alleged that they systemically discriminated against children with severe learning disabilities.

The Tribunal stated that access to the public education system entails more than simply being able to attend public school. Students must be provided with the required supports and accommodations in order for the access to be beneficial.

The Tribunal found⁵² that the respondents had failed to accommodate the son's learning needs. It found that the District had discriminated against the complainant's son by:

- failing to ensure that he received early intensive intervention;
- not providing him with an individual needs-based assessment;
- not providing an Orton-Gillingham or alternative program within the district;
- not following its own recommendation that he attend the District Diagnostic Centre (DC1), a specialized learning environment with intensive remediation services; and
- not ensuring that, following the DC1 closure, other sufficiently intense and effective interventions were in place to replace it.

The Tribunal found that the District systemically discriminated against all students with Severe Learning Disabilities (SLD) by:

- closing the DC1 without ensuring that other sufficiently intensive interventions were available thereafter;
- not ensuring that there was a range of services for SLD students adequate to their needs; and
- disproportionately cutting core services for SLD students.

Further, the Tribunal found⁵³ that the Ministry had systemically discriminated against all students with SLD by:

- establishing a funding cap that limited the available funding for SLD students, which resulted in under-funding of SLD students;
- under-funding the District until after the District experienced a financial crisis that resulted in significant cuts to the services provided to SLD students; and

⁵² *Moore* v. *B.C. (Ministry of Education) and School District No. 44*, 2005 BCHRT 580 at paras. 903 to 905; http://www.bchrt.bc.ca/decisions/2005/pdf/Moore_v_BC_(Ministry_of_Education)_and_School_District_No_44_20 05_BCHRT_580.pdf

⁵³ *Moore* v. *B.C. (Ministry of Education) and School District No. 44*, 2005 BCHRT 580 at para. 887; http://www.bchrt.bc.ca/decisions/2005/pdf/Moore_v_BC_(Ministry_of_Education)_and_School_District_No_44_20 05_BCHRT_580.pdf

 focusing its monitoring only on spending and fiscal concerns, while failing to ensure that early intervention and a range of services for SLD students was mandatory.

The Tribunal found that neither the District nor the Ministry had established that they could not accommodate the complainant's son and other SLD students without undue hardship. The Tribunal ordered the respondents to reimburse the complainant for his son's attendance at private schools until the completion of grade 12. It also awarded \$10,000 for the injury to the complainant's son's dignity. Further, the Tribunal made an order to the District and the Ministry with regard to funding, delivery of services and early intervention.

Discussion: How the Meiorin Test was applied in the Moore case⁵⁴

What standard was applied?

"The Ministry and the District will provide support and accommodation services to Jeffrey, and other SLD students, to allow appropriate and meaningful access to the benefits of the educational system, based on then known best practices and available resources."

Was the standard for a purpose rationally connected to the function being performed by the Department and the District?

"[Yes, the standard] is rationally connected to the provision of educational services. Neither the District nor the Ministry can be expected to provide services on other than what were the then known best practices. Further, it must be acknowledged that government funds are not infinite and some limits on funding have to be established to ensure that the District and the Ministry are able to carry out the function of providing educational services as balanced against the Province's other constitutional responsibilities."

Was the standard adopted in good faith?

Yes, the standard was adopted in good faith.

Could the Department and the District accommodate the complainant and other learning disabled students without undue hardship?

To establish undue hardship, the Department and the District had to lead evidence that they considered and rejected all viable forms of accommodation to meet the needs of the complainant and other learning disabled students. In this

⁵⁴ *Moore* v. *B.C. (Ministry of Education) and School District No. 44*, 2005 BCHRT 580, paras. 916 to 941; http://www.bchrt.bc.ca/decisions/2005/pdf/Moore_v_BC_(Ministry_of_Education)_and_School_District_No_44_20 05_BCHRT_580.pdf

case, the evidence did not support that they had done so. As well, the Department had failed to provide evidence outlining a cost defence.

OTHER CASE LAW

Below are summaries of the most recent court and tribunal decisions involving educational services at the elementary, middle, high and post-secondary levels, in alphabetical order.

B.C. v. *New Brunswick (Department of Education*)⁵⁵ (2004) (New Brunswick Human Rights Board of Inquiry)

The complainant's son was diagnosed with ADHD. She alleged that his educational needs were not being met by the Department of Education. She alleged that, after years of receiving inadequate educational services within the public education system in New Brunswick, her son was functioning at least two to four years behind his peers in most subjects. As a result, she requested that the Department of Education pay for him to attend a private school in Nova Scotia. This private school specializes in teaching children with learning disabilities and provides nearly one-on-one instruction. The Department refused to send him to this school despite the fact that they had previously paid for such attendance by other students. Prior to the complainant's son attending the school, when the Department began to implement inclusion in schools, it had made a decision not to continue to pay for this type of service (a private, segregated school).

The majority of the Board of Inquiry found that the Department had met the needs of the complainant's son, and therefore a prima facie complaint of discrimination had not been set out. The majority found that the Department's effort to accommodate had been reasonable, and that the complainant had failed in her duty under the *Education Act* to communicate effectively with educational officials and provide all pertinent information about her son. However, it must be noted that the minority decision stated that the Department had failed to meet the educational needs of the complainant's son.

Eaton v. *Brant County Board of Education*⁵⁶ (1996) (Supreme Court of Canada)

The complainant's daughter was a 12 year old student with cerebral palsy who was unable to communicate through speech, sign language or other communication systems. She had disabilities related to vision and mobility that resulted in her mainly using a wheelchair. She was defined as an exceptional student by an identification placement and review committee, and her parents requested that she be placed in a neighbourhood school on a trial basis instead of a special education class. She was provided with a full-time assistant whose principal function was to attend to her needs. However, after three years, it was decided, based on the information provided by the teachers and as-

⁵⁵ B.C. v. New Brunswick (Department of Education) [2004] N.B.H.R.B.I.D. No. 2, No. HR-003-01

⁵⁶ Eaton v. Brant County Board of Education [1997] 1 S.C.R. 241 (Supreme Court of Canada); http://scc.lexum.umontreal.ca/en/1997/1997rcs1-241/1997rcs1-241.html

sistants, that the placement was not in the best interests of the complainant's daughter and in fact may harm her.

One of the issues before the Supreme Court of Canada was whether the school board and Special Education Tribunal had contravened section 15 of the *Canadian Charter of Rights and Freedoms.* The Court ruled that they had balanced the pupil's various educational interests appropriately, had taken into account her special needs, and had included the requirement of ongoing assessment of her best interests so that any changes in her needs could be reflected in her placement. The Supreme Court stated that a decision reached after such an approach could not be considered a burden or a disadvantage imposed on a child and, therefore, the decision of the Tribunal had not violated her equality rights under Section 15 of the *Charter*.

The Supreme Court further noted that the parents and school board had a continuing obligation to work together to meet the complainant's present and future needs, and that the parents' view of their child's best interests is not dispositive of the question.

*Eldridge v. British Columbia (Attorney General)*⁵⁷ (1997) (Supreme Court of Canada)

The appellants were born deaf and their preferred means of communication was sign language. They maintained that absences of interpreters in hospitals impaired their ability to communicate with their doctors and other health care professionals, thus increasing the risk of misdiagnosis and ineffective treatment. They sought a declaration from the court that the failure of the Province to provide sign language interpreters as an insured benefit to assist them in their communication with their doctors and health care providers violated their rights under section 15 of *the Canadian Charter of Rights and Freedoms*.

The Province did not provide any health services directly, as it paid for them to be delivered by medical health care providers on a fee-for-service basis, and hospitals were funded through a global lump sum payment. Health care providers were reimbursed for specific services that were provided for through the Medical Services Plan.

The Supreme Court of Canada found that the failure of the Medical Services Commission and hospitals, and hence the Province, to provide sign language interpretation where it was necessary for effective communication violated s. 15(1) of the *Charter* with regard to the rights of deaf persons.

⁵⁷ *Eldridge v. British Columbia (Attorney General)* [1997] S.C.J. No. 86; http://scc.lexum.umontreal.ca/en/1997/1997rcs3-624/1997rcs3-624.html

Hannaford v. Douglas College⁵⁸ (2000) (British Columbia Human Rights Tribunal)

The complainant was enrolled in classes with the goal of becoming a child and youth care counsellor. She claimed to have a visual and reading disability related to Graves disease and a cognitive and learning disability related to a childhood fall. The College provided her with extra time to write her exams and an access aide who assisted her in obtaining information from the library and organizing her materials. She was also seeing a psychologist and an educational therapist.

The complainant informed the College that she did not want any more contact with the educational therapist. In response, the College withdrew all services, saying that the complainant had received more services than she needed based on her marks and what she described as her disability. The complainant alleged that the College withdrew services she needed in order to accommodate her cognitive and learning disability.

The Tribunal found that she did not have a cognitive and learning disability, nor did she inform the College of it. The Tribunal also found that the College had reasonably accommodated the complainant for her reading and visual disability.

Howard v. *University of British Columbia (No. 1)*⁵⁹ (1993) (British Columbia Council of Human Rights)

The complainant is profoundly deaf. His native language is American Sign Language. He requested that the university provide him with a sign language interpreter for a number of courses he needed in order to obtain a teaching certificate. The University refused to provide him with the level of interpretive services necessary to complete his teaching certificate.

The Council of Human Rights found that a university education was a service customarily available to the public and that sign language interpreters are an accommodation required by deaf students to enable them to use the University's educational services.

Finally, the Council concluded that the University had failed to accommodate the complainant to the point of undue hardship. The Council agreed that absorbing the cost of the interpreter would have some impact on the University's budget, but found that there was no evidence that it would cause more than a minor interference with the operations of the University.

⁵⁸ *Hannaford* v. *Douglas College* (2000), 37 C.H.R.R. D/336, 2000 BCHRT 25, British Columbia Human Rights Tribunal; http://www.bchrt.bc.ca/decisions/2000/pdf/hannaford_v_douglas_college_2000_bchrt_25.pdf

⁵⁹ Howard v. University of British Columbia (No. 1) (1993), 18 C.H.R.R. D/353, British Columbia Council of Human Rights.

School District No. 44 (North Vancouver) v. Jubran⁶⁰ (2005) (British Columbia Court of Appeal)

The complainant alleged that during the five years that he attended secondary school, he was verbally and physically assaulted by other students because of his perceived homosexuality. He alleged that he was called "homo, faggot, and gay" and was spat on, shoved, kicked and punched by the other students, and that the school board was aware of this harassment but failed to provide him with a safe, harassment-free school environment. The school board acknowledged that it was aware of some of the harassment, but argued that it should not be held responsible for failing to eradicate discrimination among the student population.

The student had complained to the school and school board and at first school personnel did not feel that the harassment was unusual, as many students complained that they were being picked on. However, school personnel did identify three students who were the main perpetrators and spoke to them about their inappropriate behaviour and possible consequences if the behaviour continued, including expulsion.

Approximately one year later, the school developed and formalized a Code of Conduct policy that was in accordance with the guidelines set by the school board. This Code of Conduct identified the principles of student conduct and certain forms of prohibited conduct, such as fighting and plagiarism. However, one year later, the complainant was still being subjected to the same behaviour and he reported it to school personnel.

After the complainant had filed his human rights complaint, the students were advised by school personnel that if their behaviour continued, it could result in a suspension. Some behaviour did continue and some students received suspensions. In one incident, a student burned a hole in the complainant's shirt while the complainant was wearing it. This student was not permitted to go on a class camping trip, but, while on the trip, other students urinated on the complainant's tent and spoke about dipping a student in acid. The school stated that they could not investigate the incident because, when the students talked about dipping a student in acid, they did not refer to the complainant by his name (they referred to a student who had a hole burned in his shirt).

The British Columbia Human Rights Tribunal found that the complainant had been discriminated on the basis of sexual orientation; it was not necessary that he consider himself to be a homosexual or that his harassers believe that he was a homosexual. The Tribunal also found that the school board was liable for the discrimination. While school personnel had responded to the situation with detentions and suspensions of the individual harassers and had had meetings with the parents, they had failed to implement a school-wide anti-bullying programme early enough to stop the harassment experienced by the complainant.

⁶⁰ Jubran v. Board of Trustees, [2002] B.C.H.R.T. 10,

http://www.bchrt.bc.ca/decisions/2002/pdf/jubran_v_board_of_trustees_2002_bchrt_10.pdf (British Columbia Human Rights Tribunal); affirmed [2005] B.C.J. No. 733, 2005 BCCA 201, http://www.courts.gov.bc.ca/Jdbtxt/CA/05/02/2005BCCA0201err2.htm (British Columbia Court of Appeal)

The Tribunal awarded the complainant \$4,000 as general damages. It noted that the largest general damages award in British Columbia at that time was \$7,500 and that the complainant had not established that the school and school board were aware of the harassment during the entire five year period. The British Columbia Court of Appeal affirmed the Tribunal's decision.

Justice Institute of British Columbia v. British Columbia (Attorney General)⁶¹ (1999) (British Columbia Supreme Court)

The complainant was a trainee police constable who was removed from training when he performed unsatisfactorily in the course testing. He had not identified himself to his instructors as someone with a learning disability, nor had he requested accommodation. After his unsatisfactory test performance, he was assessed as having a learning disability. The doctor who completed the complainant's neuropsychological assessment said that, if the complainant were able to write exams in a private room and given additional time, he would be able to complete the required training successfully. Even with this assessment information, the Justice Institute continued to refuse to let the complainant carry on in the program. The Court ruled that the complainant had a learning disability that could be accommodated by allowing him to take examinations in an alternate way, such as having more time to write an exam.

Robb v. *St. Margaret's School*⁶² (2003) (British Columbia Human Rights Tribunal)

The complainant was a grade three student enrolled in a private school. She was assessed during her grade three year as having a severe learning disability involving deficits in symbolic processing, nonverbal reasoning and visual-motor co-ordination. The assessor determined that she needed a comprehensive individual education plan, remedial reading instruction, adaptations for reading in the classroom, bypass strategies for writing (for example, scribing and voice dictation), a modified math program, reduced quantity of assigned work, opportunities to advance conceptually, and strategies for management of her attention patterns. Two months later, the school informed the complainant's parents that the complainant would not be able to enrol in the school for the next school year. The Tribunal found that re-enrolment was withheld because of her learning disability. It found that the school's decision to withhold enrolment was made by someone with no expertise in learning disabilities, based on vague criteria and on the advice of staff who lacked experience in dealing with students with severe learning disabilities. The Tribunal concluded that it would not have been an undue hardship to resolve the situation by less drastic means, and that it was discriminatory to deny the complainant enrolment at the school.

 ⁶¹ Justice Institute of British Columbia v. British Columbia (Attorney General) (1999) B.C.J. no. 1571; (1999) 17
Admin. L.R. (3d) 267 (British Columbia Supreme Court); http://www.courts.gov.bc.ca/jdb-txt/sc/99/10/s99-1048.txt
⁶² Robb v. St. Margaret's School (2003), 45 C.H.R.R. D/276, 2003 BCHRT 4, British Columbia Human Rights Tribunal; http://www.bchrt.bc.ca/decisions/2003/pdf/robb_v_st_margarets_school_2003_bchrt_4.pdf

CONCLUSION

Legal principles from the case law provide direction on a wide range of issues important to the provision of services in the education sector. The general duty to accommodate requires that service providers accommodate to the point of undue hardship.

From *Grismer* and *Meiorin*, it is apparent the law requires that all policies include a process for accommodating persons to the point of undue hardship. The process must include individual testing of persons who are negatively treated by the policy to see if they can meet the requirements of the policy with reasonable accommodation.

Government's Response to the Recommendations of:

Strengthening Inclusion, Strengthening Schools

An Action Plan for 2012-13



Government's Response to the Recommendations of:

Strengthening Inclusion, Strengthening Schools

An Action Plan for 2012-13

Premier's Message

Our government believes that everyone has the right to succeed in New Brunswick. And we believe that it is important for every child to have the opportunity to succeed and reach his/her full potential.

Inclusion offers that opportunity. Inclusion starts in families and is reflected in our schools and communities.

I know from my experience that inclusion matters. It is a value that we want our children to learn and practise. My two sons, Jonathan and Ben, benefited greatly from the remarkable inclusive experience offered to all students at their schools in Woodstock. Their experience is just one example of the positive impact of inclusive education in schools across our province.

Making our schools inclusive helps us lay the foundation of success for every student in our education system.

Through inclusion, we are ensuring access to the experiences, the knowledge and the skills that will prepare our children for the future.

Our government is committed to enhancing supports for teachers and students to make a quality education in an inclusive school system a reality.

Children need supports that are personalized and flexible. The programs and actions that make up this action plan will help us do that more effectively.

Through our increased investments and initiatives in inclusion, we will improve the delivery of priority services to all children, no matter where they live in New Brunswick.

Our children are our future. When we give every child the opportunity to reach his/her full potential, we are setting New Brunswick up for success.

Our government will remain committed to enhancing inclusive positive learning environments and enhancing the quality of life for all New Brunswickers.

The Hon. David Alward Premier of New Brunswick

Minister's Message

We are beginning a new era in inclusive education.

When I became Minister of Education and Early Childhood Development, making improvements to our education system that allows every child to reach his/her full potential in inclusive settings, was a top priority given to me by Premier David Alward. That is why I tasked Dr. Gordon L. Porter and Dr. Angèla Aucoin to do an intensive review of current support for inclusion and provide detailed actions that are required to strengthen the inclusive positive learning environment in our schools.

Having received the comprehensive *Strengthening Inclusion, Strengthening Schools* report from Dr. Porter and Dr. Aucoin in December 2011, my department prepared a year-one action plan as the first step to putting the report's recommendations into place.

Supporting each of our schools to become inclusive positive learning environments, with the proper support and training, gives the ability of each student to reach his/her full potential. Inclusive positive learning environments promote social cohesion, belonging, active participation in learning, a complete school experience and positive interactions with peers and others in the school community.

An inclusive education system supports the learning of each student in inclusive settings through 21st century pedagogical strategies, methods, accommodations and approaches that are effective and respectful and encourages high expectations and achievement for each.

Every child is unique. His/her different strengths, abilities and diverse learning needs must be recognized as his/her foundation for learning, and his/her learning challenges must be identified, understood and accommodated.

I thank Dr. Porter and Dr. Aucoin for their dedication and leadership. The teams of people working together provided great momentum. Their engagement of hundreds of people involved with the school system was enormous. I thank everyone for their input. It is clear to me there are great people around us who have children at heart.

The investments and initiatives which we are undertaking will support teachers, principals and, most importantly, our children as we move forward in ensuring that everyone reaches their full potential in a prosperous, healthy province.

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The Hon. Jody Carr, Minister of Education and Early Childhood Development

Strengthening Inclusion, Strengthening Schools:

What we learned; what we will do in 2012-13

In December 2010, Minister Carr announced that part of his mandate as Minister of Education and Early Childhood Development (EECD) included facilitating a review of the current status of inclusive education within the province of New Brunswick as per government's platform commitment. Minister Carr appointed Dr. Gordon L. Porter to lead the review process with the assistance of Dr. Angèla AuCoin, and to make recommendations to improve our success in providing an inclusive education for all our students. The objective of the review was to "strengthen New Brunswick's public education system by developing an updated action plan for the implementation of the MacKay Report."

The review team engaged EECD, school district and school-based personnel to gain insight into the strengths and challenges associated with inclusive education. In total, the review team visited 55 schools, 33 anglophone and 22 francophone. Equally critical was input from parents, students, stakeholders and partners in education, gathered through consultation meetings. Through this comprehensive engagement process, and by listening to the multitude of voices that have provided their guidance, Dr. Porter and Dr. AuCoin have been able to develop recommendations for action that will assist EECD in taking the next steps for an inclusive school system.

Why is inclusion important?

The New Brunswick government, with all of its stakeholders, is responsible for the education of all children. Every child must have the opportunity, as noted in the department's 2009 definition of Inclusive Education, "to reach his or her full learning potential" in a school system where "decisions are based on the individual needs of the student and founded on evidence." Every child, no matter his/her differences, has the right to learn with his/her peers to his/her potential and feel safe, secure and respected while doing so. Children and students of all backgrounds, including those new to Canada, First Nations, those with socio-economic challenges, struggling learners, those with behaviour issues, and those with disabilities benefit from inclusive, positive learning environments. Inclusion is based on values and beliefs that support each child while promoting social cohesion, belonging, active participation in learning, a complete school experience, and positive interactions with peers and others in the school community.

An inclusive education system puts the individual student at its heart and nurtures and supports his/her learning through pedagogical strategies, methods, accommodations and approaches that are effective and respectful and encourages high expectations and achievement. An inclusive education system is not designed to support the few at the expense of the many; it is designed to support everyone.

While New Brunswick has been on the forefront of implementing inclusive education for 25 years, there is still much to be done if we are to truly operationalize the definition of Inclusive Education described above. Dr. Porter and Dr. AuCoin have provided us with a blueprint in their report, a set of comprehensive actions, which if pursued with vigour and passion, will result in a better system for all New Brunswick children.

Dr. Porter and Dr. AuCoin identified 12 significant themes that emerged through their school district and stakeholder engagement:

- 1. LEADERSHIP: There is a direct link between the strength of inclusive positive learning environments in schools and the values held by its leaders. Developing and supporting principled and effective leadership within and throughout all levels of the education system is essential for the success of every student, classroom teacher and school.
- 2. ROLES AND RESPONSIBILITIES: There is a need to revisit the roles and responsibilities of those who support and work with classroom teachers in New Brunswick schools. Clarity on the experience and training needed as well as role definition is a priority to make a real difference in student and teacher success.
- 3. INSTRUCTION AND LEARNING: A solid and common understanding of the philosophy and best practices related to accommodating all students in an inclusive and diverse classroom of the 21st century is essential throughout the education system. Best practices for inclusive education need to influence decisions surrounding pedagogy, curriculum development and professional development.
- 4. PROFESSIONAL LEARNING: Professional learning for staff members is a vital element in building a successful education system. It is essential to support schools and teachers to meet the needs of an ever-more diverse student population. Professional learning goals for all staff must reflect inclusive education philosophy embedded within the school context, with a focus on collaborative teams.
- 5. STRUCTURES FOR COLLABORATION: The composition of New Brunswick classrooms has changed during the last 25 years, reflecting a greater degree of student diversity. To better meet the needs of all students in the common learning environment, (as defined EECD's *Definition of Inclusive Education*), the classroom teacher works with a variety of professionals. Members of the school team bring his/her specific skills and knowledge to support the classroom teacher and his/her students. Every school and staff person must be open to collaboration with a well-defined process for collaboration and teamwork, internally and with parents, external agencies and stakeholders.
- 6. EQUITY: New Brunswick provincial curricula need to be provided equitably to all students in an inclusive, common learning environment shared among age-appropriate, neighbourhood peers. All students regardless of socio-economic status, sexual orientation, culture, residence, strengths and challenges have the right to access an appropriate inclusive education with high expectations of achievement for every student.

- 7. FUNDING AND ACCOUNTABILITY: A new approach needs to be developed to provide effectively for departmental-identified priorities. It is critical to assure that actual expenditures are aligned with program commitments and accountability for program outcomes for students is achieved.
- 8. PERSONALIZED LEARNING PLANS: Instructional planning for students who are experiencing obstacles to learning needs to be collaborative, evidenced-based, professional and designed such that the classroom teacher finds it meaningful for daily planning. A new electronic planning and streamlined reporting structure needs to be developed.
- 9. POSITIVE LEARNING ENVIRONMENT: In an inclusive setting, classroom teachers help students develop and engage in socially desirable behaviours in a positive common learning environment. Strategies to anticipate and prevent discipline problems are part of an effective teacher's skills set. When the classroom teacher needs additional support to manage problem behaviours, trained personnel should collaborate with the teacher, parents and students to elaborate, implement and evaluate behavioural support plans.
- **10. HIGH SCHOOLS:** Failure in high school negates even the most positive prior school experience. There needs to be an intentional, collaborative plan to meet the needs of all our students in high schools.
- 11. ALTERNATIVE EDUCATION: Alternative Education has traditionally been defined as a program for youth of high school age (grades 9 -12) who require an alternative to the standard educational programs offered in New Brunswick high schools. A program to support students considered at-risk and requiring alternative education strategies to prevent school failure must be based on clearly defined criteria focused on student needs.
- 12. **RESOLVING CONFLICT:** When conflict occurs over a student's learning program or the strategies utilized by the classroom teacher and other school staff, a transparent process that assures both school staff and parents of fair and respectful treatment must be available on a reliable and consistent basis.

The Path Forward

Within each of the 12 themes described above, numerous areas for action to improve inclusive education within the New Brunswick context were recommended to government. These themes have also assisted the department in its work to reorganize school districts to improve the collective capacity of the school system to support all students in their learning. Moreover, the recommendations in the Strengthening Inclusion, Strengthening Schools report also support recommendations from the Ministerial Advisory Committee on Early Learning and Child Care and the Ministerial Advisory Committee on Positive Learning and Working Environment. They promote the current demonstration sites for Integrated Services Delivery, where several government departments are working together in two school districts to provide integrated, earlier, relevant and timely intervention services. All of this work builds upon each other and strengthens our approach within the system to deliver truly integrated and effective approaches with the child at the centre. Government is committed to improving its inclusive education system significantly during the next three to five years, using the Strengthening Inclusion, Strengthening Schools report as its blueprint. Our implementation plan will be assessed by our actions, our results, our stakeholders and most importantly, the students we serve. Most importantly, inclusion must be central to the department's Education Plan, integrated with all actions that the department will take during the next three years to support learning. To that end, the following actions address many of the themes and recommendations in the report and have been identified as priorities for year one of a multi-year action plan and will be pursued in collaboration with our newly elected district education councils, our partners and stakeholders.

Year 1 key actions

The list below is not exhaustive of all of the actions the department will undertake in the coming year to address inclusion. All of the regular work of the department, from its early childhood services to its K-12 services, will be assessed through the lens of whether it supports or promotes the learning and success of every student in an inclusive positive learning environment. As part of its ongoing regular reporting on its implementation of the plan, all activities will be tracked and shared with the public.

Actions at the School/Community Level

- Allocate additional teaching positions for methods and resources, guidance counselling, behaviour interventionists and and other teaching supports for inclusion for the start of the 2012-13 school year.
- Design and implement professional development modules and strategies that support inclusion for all administrators, teachers, educational assistants and support personnel.

- The department will develop and begin the implementation of a long-term plan for professional development that focuses on indicators of effective inclusive practices and strategies for differentiating learning, supported with coaching for classroom and other teachers, educational assistants and administrators.
- Create a dispute resolution process so that unresolved issues between families and the school system can have their issues dealt with in a consistent, fair, equitable and timely manner.
 - With our partners and stakeholders, the department will develop a new dispute resolution process that will be in place for the fall of 2012.
- Restructuring of Students Services teams at the school level to be broader in scope and include all learning supports to students, including Literacy, Numeracy and Francization for example. These school-based teams will be renamed to "education support teams."
 - Restructure and expand "education support teams" at the school level to include administrators, resource teachers, guidance counsellors, Numeracy and Literacy teachers, teachers en Francization (francophone sector), and others as required (e.g., educational assistants, school psychologists, support services to education social workers and rehabilitation workers, First Nations support workers and school intervention/behaviour mentors). The role of these teams will be to support classroom teachers to foster the learning of all students in inclusive positive learning environments.
- Ensure that more teachers, educational assistants and behaviour interventionists have access to training in evidence-based interventions for autism.
 - EECD will implement an integrated approach to autism training that will build internal capacity and ensure more teachers, educational assistants and other support staff have access to evidence-based interventions from certified, qualified clinical staff.
 - EECD will create an external quality standards committee made of up renowned local and international experts to ensure the approach is current and meets proven international evidence-based standards.
- Review and adapt funding model to better respond to the needs for language training for children of families who are new to Canada.
- Increase funding for francisation supports.
 - Provide professional development for Francization teachers.
- Develop strategies to increase the number of bilingual methods and resource teachers.
 - For the French Immersion program within the anglophone sector to be truly inclusive, strategies for recruiting bilingual resource and methods teachers will be developed.

- Increase funding for assistive technology for students by 20 per cent.
 - Access to the appropriate assistive technology is critical to ensure students are supported for success in an inclusive learning environment.
- Funding for community-based facilitation of inclusion within childcare facilities.
 - EECD will invest \$850,000 over three years to support the design and implementation of services to support inclusion within childcare facilities, through the hiring of facilitators who will increase the capacity of these facilities to offer inclusive services.
 - An additional \$840,000 will be invested over three years to increase the number of support workers by 50 to support the participation of children with special needs while their parents are at work.

Actions at the school district level

- Create a new director of education support services position in every school district, effective July 1, 2012, in recognition of the need to serve all students and provide the sustained leadership required as part of the department's school district reorganization;
 - A new director of education support services position will be located within the office of the superintendent to provide leadership and co-ordinate programs and services that support inclusive education and intervention services in schools. This position will support and be responsible for all educational support services, programs and intervention for students. They will be responsible for implementing the integration of services between partner government departments and agencies. This position will support the department's vision on inclusion, as supported by Dr. Porter and Dr. AuCoin's inclusion review.
- Speech language pathologists, rehabilitation workers, social workers and other support services to Department of Education and Early Childhood Development personnel will be transferred to this department from the departments of Health and Social Development.
 - Over the coming months, EECD will work with the departments of Health and Social Development to provide a seamless transfer of personnel to ensure that children, students, families, educators and other support staff have services through a single system approach.

Actions at the departmental level

- Create a capital improvements accessibility fund that will provide targeted funding for capital improvement expenses related to accessibility of school buildings for students and the community with an initial investment of \$250,000 each year.
- Develop a multi-year training program for new and existing methods and resources teachers.
 - o The department will identify the criteria and competencies required to ensure

methods and resource teachers have the necessary training and education required to affect the changes required to improve inclusive support services in every school.

- Create a joint working group with CUPE 2745, implicated partners and stakeholders and the Management Board to identify the roles and responsibilities of educational assistants to improve inclusive support services.
 - The recommendations proposed by Dr. Porter and Dr. AuCoin require a revisit of the current roles and responsibilities of our valuable educational assistants. We will work with CUPE 2745 and our other partners to determine what changes will be required in these positions to complement the strengthened role of our methods and resource teachers.
- Continue embedding *Universal Design for Learning* strategies when developing and implementing all new curricula.
- Develop and adopt policies and guidelines to support the 2009 inclusive education definition and the recommendations included in the *Strengthening Inclusion, Strengthening Schools* report.
 - The 2009 EECD definition of inclusive education will serve as the umbrella for all policies and guidelines to be developed and implemented in response to Dr. Porter and Dr. AuCoin's report.
- Amend certification requirements for new principals to ensure they have mandatory training in leadership practices and strategies for inclusive education.
 - The department will develop and include a mandatory module on leadership practices and strategies for inclusive education for new and existing principals and other administrators. This module will be completed subsequent to the development of standards for inclusive practices for school administrators and will be introduced in the 2013-14 school year.
- Complete the evaluation of the Integrated Services Delivery demonstration sites and propose options to expand to other clusters of schools.
 - EECD, in partnership with the departments of Social Development, Health, Public Safety and Justice and Attorney General, is currently implementing an integrated services delivery approach in the Acadian Peninsula and Charlotte County with a \$1.4 million investment. The evaluation of these demonstration sites will be completed in 2013 and will provide the departments involved with a clear blueprint for how best to move forward with an integrated approach in every school that ensures every child and family requiring integrated services between two or more departments receives adequate, timely and effective support closest to their home and school.

- Create a minister's inclusive education advisory group for each linguistic sector to support the implementation of the *Strengthening Inclusion, Strengthening Schools* action plan.
 - One inclusive education working group for each linguistic sector will be formed with representatives of district education councils, district and departmental personnel and stakeholders to ensure adequate implementation and progress is led and monitored. The working groups will be chaired by Dr. Porter and Dr. AuCoin, respectively, who will build on the positive collaboration and understanding that has evolved during the review process. Dr. Porter and Dr. AuCoin will serve as special advisers to the department and school districts throughout the implementation process.
- Create two anti-bullying co-ordinator positions, one for each linguistic sector, whose responsibility will be to co-ordinate and monitor departmental, district and school reporting requirements emanating from legislative amendments and to promote anti-bullying initiatives at the school, district and provincial level.
- Develop a new funding model for Education Support Services for school districts and a support strategy for schools with a higher proportion of students from lower socioeconomic households or schools not being able to access services in their language.
 - Develop additional funding criteria and model to be used for "vulnerable schools" with higher proportion of students from lower socioeconomic households, which face additional challenges in supporting a higher proportion of vulnerable children or accessing services in their language.
- Develop a high school strategy to fully embed strong, inclusive, and positive learning environments within all high schools in New Brunswick.
 - Revise graduation/diploma requirements so the high school program is more relevant and engages all learners in 21st century skill development.
 - Identify and support high school inclusion and success champions, who can serve as mentors for others within the high school system.
 - Review and revised policies and strategies related to alternative education.
- Strengthen strategies to support positive and inclusive transitions to, from and throughout the school system.
 - Support successful employment and post-secondary transitions for all high school learners
 - Partner with First Nations communities and multicultural associations to develop a comprehensive transition process for students.
 - Create a director of the office of first nations to coordinate the vision and develop and implement education services in collaboration with our First Nations partners.
An Investment in our Future

In total, a minimum of \$62.07 million will be invested during the next three years to support our inclusion action plan.

Year 1 investments

\$18.81 million will be invested to support the action plan in 2012-13.

Highlights include:

- **\$2.5 million** will be targeted toward programs and services to support the department's action plan, increasing the responsiveness and effectiveness of New Brunswick's inclusive public education system.
- **\$250,000** will be invested to create a new Capital Improvement Accessibility Fund in 2012-13 that will grow over time.
- **\$250,000** will be invested to support the design and implementation of services to support inclusion within childcare facilities, through the hiring of facilitators who will increase the capacity of these facilities to offer inclusive services.
- \$1.2 million will be invested in increased hours for Education Assistants.
- \$750,000 for a new director of educational support services in each school district
- **\$12.46 million** will be allocated for additional teaching positions for methods and resources, guidance counseling, behaviour interventionists, and other teaching supports for inclusion for the start of the 2012-13 school year.
- **\$1.4 million** will be invested in the two Integrated Services Delivery pilot sites and their evaluation.

Year 2 and Year 3: 2013-14 and 2014-15 investments

\$43.26 million will be invested to support the action plan in 2013-14 and 2014-15. Highlights include:

- **\$2.5 million in additional funding** will be added in each of the two years, totaling a cumulative **\$15 Million** to support the continued implementation of the inclusion action plan.
- **\$420,000 in <u>new</u> funding** will be invested in 2013-14 and continued in 2014-15, totalling \$840,000 to increase the number of early learning support workers by 50 to facilitate the participation of children with special needs while their parents are at work.
- Funding to support inclusion within childcare facilities will be increased to **\$300,000** in 2013-14 and continue in 2014-15, totalling an additional \$600,000.
- As a minimum, another \$24.92 million in funding to maintain the additional teaching positions to support inclusive education will be provided.
- As a minimum, \$4.4 million funding for the new capital improvement accessibility fund, directors of education support, and increased hours for educational assistants will continue in 2013-15.

Convention on the Rights of Persons with Disabilities and Optional Protocol



UNITED NATIONS

CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

Preamble

The States Parties to the present Convention,

(a) *Recalling* the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,

(b) Recognizing that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,

(c) *Reaffirming* the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,

(d) Recalling the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

(e) Recognizing that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others,

(f) Recognizing the importance of the principles and policy guidelines contained in the World Programme of Action concerning Disabled Persons and in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in influencing the promotion, formulation and evaluation of the policies, plans, programmes and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities,

(g) *Emphasizing* the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development,

(*h*) *Recognizing also* that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person,

(i) Recognizing further the diversity of persons with disabilities,

(*j*) *Recognizing* the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support,

(k) Concerned that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world,

(*l*) *Recognizing* the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries,

(*m*) *Recognizing* the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty,

(*n*) *Recognizing* the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,

(*o*) *Considering* that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them,

(*p*) *Concerned* about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status,

(q) Recognizing that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,

(r) Recognizing that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis

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with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,

(s) *Emphasizing* the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,

(*t*) *Highlighting* the fact that the majority of persons with disabilities live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities,

(*u*) Bearing in mind that conditions of peace and security based on full respect for the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation,

(v) Recognizing the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,

(w) Realizing that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights,

(x) Convinced that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities,

(y) *Convinced* that a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,

Have agreed as follows:

Article 1 Purpose

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Article 2 Definitions

For the purposes of the present Convention:

"Communication" includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

"Language" includes spoken and signed languages and other forms of non spoken languages;

"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

"Universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

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Article 3 General principles

The principles of the present Convention shall be:

(*a*) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society;

(*d*) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

- (*e*) Equality of opportunity;
- (*f*) Accessibility;
- (g) Equality between men and women;

(h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Article 4 General obligations

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

(a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;

(b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;

(c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;

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(d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;

(e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;

(f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;

(g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;

(h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;

(*i*) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in the present Convention so as to better provide the assistance and services guaranteed by those rights.

2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.

5. The provisions of the present Convention shall extend to all parts of federal States without any limitations or exceptions.

Article 5 Equality and non-discrimination

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

Article 6 Women with disabilities

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

Article 7 Children with disabilities

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

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2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

Article 8 Awareness-raising

1. States Parties undertake to adopt immediate, effective and appropriate measures:

(*a*) To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;

(b) To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;

(c) To promote awareness of the capabilities and contributions of persons with disabilities.

2. Measures to this end include:

(a) Initiating and maintaining effective public awareness campaigns designed:

(i) To nurture receptiveness to the rights of persons with disabilities;

(ii) To promote positive perceptions and greater social awareness towards persons with disabilities;

(iii) To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;

(b) Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;

(c) Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;

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(d) Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

Article 9 Accessibility

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

(a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;

(b) Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures:

(a) To develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;

(b) To ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;

(c) To provide training for stakeholders on accessibility issues facing persons with disabilities;

(d) To provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;

(*e*) To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;

(f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;

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(g) To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;

(*h*) To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

Article 10 Right to life

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

Article 11

Situations of risk and humanitarian emergencies

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

Article 12 Equal recognition before the law

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The

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safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

Article 13 Access to justice

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Article 14 Liberty and security of person

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(*a*) Enjoy the right to liberty and security of person;

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.

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Article 15 Freedom from torture or cruel, inhuman or degrading treatment or punishment

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

Article 16 Freedom from exploitation, violence and abuse

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

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Article 17 Protecting the integrity of the person

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

Article 18 Liberty of movement and nationality

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

(a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;

(b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;

(c) Are free to leave any country, including their own;

(d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

Article 19 Living independently and being included in the community

States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

(a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;

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(b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

(c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

Article 20 Personal mobility

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

(a) Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;

(b) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;

(c) Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;

(d) Encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.

Article 21 Freedom of expression and opinion, and access to information

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

(*a*) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;

(b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means,

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modes and formats of communication of their choice by persons with disabilities in official interactions;

(c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;

(d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;

(e) Recognizing and promoting the use of sign languages.

Article 22 Respect for privacy

1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

Article 23 Respect for home and the family

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:

(a) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;

(b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;

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(c) Persons with disabilities, including children, retain their fertility on an equal basis with others.

2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

Article 24 Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

(*a*) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

(b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

(c) Enabling persons with disabilities to participate effectively in a free society.

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2. In realizing this right, States Parties shall ensure that:

(a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;

(b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

(c) Reasonable accommodation of the individual's requirements is provided;

(*d*) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

(e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

(*a*) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

(b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

(c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

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5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

Article 25 Health

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

(*a*) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;

(b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;

(c) Provide these health services as close as possible to people's own communities, including in rural areas;

(d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;

(e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;

(f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

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Article 26 Habilitation and rehabilitation

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:

(a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;

(b) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

Article 27 Work and employment

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

(*a*) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

(b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy

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working conditions, including protection from harassment, and the redress of grievances;

(c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;

(d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;

(e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;

(f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;

(g) Employ persons with disabilities in the public sector;

(*h*) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;

(*i*) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

(*j*) Promote the acquisition by persons with disabilities of work experience in the open labour market;

(*k*) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

Article 28 Adequate standard of living and social protection

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

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2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

(*a*) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;

(b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;

(c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disabilityrelated expenses, including adequate training, counselling, financial assistance and respite care;

(d) To ensure access by persons with disabilities to public housing programmes;

(e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

Article 29 Participation in political and public life

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:

(*a*) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:

(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

(ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;

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(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(b) To promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

(i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

(ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

Article 30 Participation in cultural life, recreation, leisure and sport

1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

(a) Enjoy access to cultural materials in accessible formats;

(b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;

(c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.

2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.

3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

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4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.

5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:

(*a*) To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;

(b) To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;

(c) To ensure that persons with disabilities have access to sporting, recreational and tourism venues;

(d) To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;

(e) To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.

Article 31 Statistics and data collection

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:

(a) Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;

(b) Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.

2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of

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States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.

3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.

Article 32 International cooperation

1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:

(a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;

(b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;

(c) Facilitating cooperation in research and access to scientific and technical knowledge;

(*d*) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.

Article 33 National implementation and monitoring

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.

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2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.

Article 34 Committee on the Rights of Persons with Disabilities

1. There shall be established a Committee on the Rights of Persons with Disabilities (hereafter referred to as "the Committee"), which shall carry out the functions hereinafter provided.

2. The Committee shall consist, at the time of entry into force of the present Convention, of twelve experts. After an additional sixty ratifications or accessions to the Convention, the membership of the Committee shall increase by six members, attaining a maximum number of eighteen members.

3. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence and experience in the field covered by the present Convention. When nominating their candidates, States Parties are invited to give due consideration to the provision set out in article 4, paragraph 3, of the present Convention.

4. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities.

5. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties from among their nationals at meetings of the Conference of States Parties. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The initial election shall be held no later than six months after the date of entry into force of the present Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall

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address a letter to the States Parties inviting them to submit the nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the State Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

7. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of six of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these six members shall be chosen by lot by the chairperson of the meeting referred to in paragraph 5 of this article.

8. The election of the six additional members of the Committee shall be held on the occasion of regular elections, in accordance with the relevant provisions of this article.

9. If a member of the Committee dies or resigns or declares that for any other cause she or he can no longer perform her or his duties, the State Party which nominated the member shall appoint another expert possessing the qualifications and meeting the requirements set out in the relevant provisions of this article, to serve for the remainder of the term.

10. The Committee shall establish its own rules of procedure.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention, and shall convene its initial meeting.

12. With the approval of the General Assembly of the United Nations, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

13. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 35 Reports by States Parties

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress

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made in that regard, within two years after the entry into force of the present Convention for the State Party concerned.

2. Thereafter, States Parties shall submit subsequent reports at least every four years and further whenever the Committee so requests.

3. The Committee shall decide any guidelines applicable to the content of the reports.

4. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports, repeat information previously provided. When preparing reports to the Committee, States Parties are invited to consider doing so in an open and transparent process and to give due consideration to the provision set out in article 4, paragraph 3, of the present Convention.

5. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 36 Consideration of reports

1. Each report shall be considered by the Committee, which shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned. The State Party may respond with any information it chooses to the Committee. The Committee may request further information from States Parties relevant to the implementation of the present Convention.

2. If a State Party is significantly overdue in the submission of a report, the Committee may notify the State Party concerned of the need to examine the implementation of the present Convention in that State Party, on the basis of reliable information available to the Committee, if the relevant report is not submitted within three months following the notification. The Committee shall invite the State Party concerned to participate in such examination. Should the State Party respond by submitting the relevant report, the provisions of paragraph 1 of this article will apply.

3. The Secretary-General of the United Nations shall make available the reports to all States Parties.

4. States Parties shall make their reports widely available to the public in their own countries and facilitate access to the suggestions and general recommendations relating to these reports.

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5. The Committee shall transmit, as it may consider appropriate, to the specialized agencies, funds and programmes of the United Nations, and other competent bodies, reports from States Parties in order to address a request or indication of a need for technical advice or assistance contained therein, along with the Committee's observations and recommendations, if any, on these requests or indications.

Article 37 Cooperation between States Parties and the Committee

1. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate.

2. In its relationship with States Parties, the Committee shall give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention, including through international cooperation.

Article 38 Relationship of the Committee with other bodies

In order to foster the effective implementation of the present Convention and to encourage international cooperation in the field covered by the present Convention:

(a) The specialized agencies and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite specialized agencies and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their

(b) The Committee, as it discharges its mandate, shall consult, as appropriate, other relevant bodies instituted by international human rights treaties, with a view to ensuring the consistency of their respective reporting guidelines, suggestions and general recommendations, and avoiding duplication and overlap in the performance of their functions.

Article 39 Report of the Committee

The Committee shall report every two years to the General Assembly and to the Economic and Social Council on its activities, and may make

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suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

Article 40 Conference of States Parties

1. The States Parties shall meet regularly in a Conference of States Parties in order to consider any matter with regard to the implementation of the present Convention.

2. No later than six months after the entry into force of the present Convention, the Conference of States Parties shall be convened by the Secretary-General of the United Nations. The subsequent meetings shall be convened by the Secretary-General biennially or upon the decision of the Conference of States Parties.

Article 41 Depositary

The Secretary-General of the United Nations shall be the depositary of the present Convention.

Article 42 Signature

The present Convention shall be open for signature by all States and by regional integration organizations at United Nations Headquarters in New York as of 30 March 2007.

Article 43 Consent to be bound

The present Convention shall be subject to ratification by signatory States and to formal confirmation by signatory regional integration organizations. It shall be open for accession by any State or regional integration organization which has not signed the Convention.

Article 44 Regional integration organizations

1. "Regional integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by the present Convention. Such organizations shall declare, in their instruments of formal

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confirmation or accession, the extent of their competence with respect to matters governed by the present Convention. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.

2. References to "States Parties" in the present Convention shall apply to such organizations within the limits of their competence.

3. For the purposes of article 45, paragraph 1, and article 47, paragraphs 2 and 3, of the present Convention, any instrument deposited by a regional integration organization shall not be counted.

4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the Conference of States Parties, with a number of votes equal to the number of their member States that are Parties to the present Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 45 Entry into force

1. The present Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession.

2. For each State or regional integration organization ratifying, formally confirming or acceding to the present Convention after the deposit of the twentieth such instrument, the Convention shall enter into force on the thirtieth day after the deposit of its own such instrument.

Article 46 Reservations

1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.

2. Reservations may be withdrawn at any time.

Article 47 Amendments

1. Any State Party may propose an amendment to the present Convention and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a conference of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of

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the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly of the United Nations for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

3. If so decided by the Conference of States Parties by consensus, an amendment adopted and approved in accordance with paragraph 1 of this article which relates exclusively to articles 34, 38, 39 and 40 shall enter into force for all States Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.

Article 48 Denunciation

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

Article 49 Accessible format

The text of the present Convention shall be made available in accessible formats.

Article 50 Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention shall be equally authentic.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

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OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

The States Parties to the present Protocol have agreed as follows:

Article 1

1. A State Party to the present Protocol ("State Party") recognizes the competence of the Committee on the Rights of Persons with Disabilities ("the Committee") to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention.

2. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.

Article 2

The Committee shall consider a communication inadmissible when:

- (a) The communication is anonymous;
- (b) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the Convention;
- (c) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
- (d) All available domestic remedies have not been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief;
- (e) It is manifestly ill-founded or not sufficiently substantiated; or when
- (f) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

Article 3

Subject to the provisions of article 2 of the present Protocol, the Committee shall bring any communications submitted to it confidentially to the attention of the State Party. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 4

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.

2. Where the Committee exercises its discretion under paragraph 1 of this article, this does not imply a determination on admissibility or on the merits of the communication.

Article 5

The Committee shall hold closed meetings when examining communications under the present Protocol. After examining a communication, the Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

Article 6

1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end submit observations with regard to the information concerned.

2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

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Article 7

1. The Committee may invite the State Party concerned to include in its report under article 35 of the Convention details of any measures taken in response to an inquiry conducted under article 6 of the present Protocol.

2. The Committee may, if necessary, after the end of the period of six months referred to in article 6, paragraph 4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 8

Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 6 and 7.

Article 9

The Secretary-General of the United Nations shall be the depositary of the present Protocol.

Article 10

The present Protocol shall be open for signature by signatory States and regional integration organizations of the Convention at United Nations Headquarters in New York as of 30 March 2007.

Article 11

The present Protocol shall be subject to ratification by signatory States of the present Protocol which have ratified or acceded to the Convention. It shall be subject to formal confirmation by signatory regional integration organizations of the present Protocol which have formally confirmed or acceded to the Convention. It shall be open for accession by any State or regional integration organization which has ratified, formally confirmed or acceded to the Convention and which has not signed the Protocol.

Article 12

1. "Regional integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by the Convention and the present Protocol. Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the Convention and the present Protocol.

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Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.

2. References to "States Parties" in the present Protocol shall apply to such organizations within the limits of their competence.

3. For the purposes of article 13, paragraph 1, and article 15, paragraph 2, of the present Protocol, any instrument deposited by a regional integration organization shall not be counted.

4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the meeting of States Parties, with a number of votes equal to the number of their member States that are Parties to the present Protocol. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 13

1. Subject to the entry into force of the Convention, the present Protocol shall enter into force on the thirtieth day after the deposit of the tenth instrument of ratification or accession.

2. For each State or regional integration organization ratifying, formally confirming or acceding to the present Protocol after the deposit of the tenth such instrument, the Protocol shall enter into force on the thirtieth day after the deposit of its own such instrument.

Article 14

1. Reservations incompatible with the object and purpose of the present Protocol shall not be permitted.

2. Reservations may be withdrawn at any time.

Article 15

1. Any State Party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a meeting of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be

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submitted by the Secretary-General to the General Assembly of the United Nations for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

Article 16

A State Party may denounce the present Protocol by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

Article 17

The text of the present Protocol shall be made available in accessible formats.

Article 18

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Protocol shall be equally authentic.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

Additional Resources

Available for free to families

Achieving Inclusion: A Parent Guide to Inclusive Education in New Brunswick (2000)

A Parent's Guide to Inclusive Education (Brochure)

Other Resources (available online)

A User's Guide to the Appeal Process. New Brunswick Department of Education. Available at www.gnb.ca/0000/publications/ss/AppealProcess2003.pdf

Best Practices for Inclusion. New Brunswick Department of Education. Available at www.gnb.ca/0000/publications/ss/bestprac.pdf

Inclusion NB national website on inclusive education – www.inclusiveeducation.ca

Guidelines and Standards: Educational Planning for Students with Exceptionalities. New Brunswick Department of Education. Available at www.gnb.ca/0000/publications/ss/sep.pdf

Inclusion Press - www.inclusion.com/inclusiveschools.html

Inclusive Education Resources. J. P. Das Developmental Disabilities Centre – University of Alberta. Available at www.ualberta.ca/~jpdasddc/inclusion/index.html

New Brunswick Education Act. Available at www.gnb.ca/0062/acts/acts/e-01-12.htm

Teaching Students with Autism Spectrum Disorders. New Brunswick Department of Education. Available at: www.gnb.ca/0000/publications/ss/TeachingStudentswithAutismSpectrumDisorders.pdf

Whole Schooling Consortium. Wayne State University. Resources on inclusive education available at www.wholeschooling.net/





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