



Bill 35 and Inclusive Education

A Reader's Guide on Potential Impacts
on Students with a Disability



InclusionNB

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Background

Education laws in New Brunswick and internationally are founded on the right of students to be included in regular education programming and environments. The Department's Policy 322 on Inclusive Education was adopted in 2013 following an extensive review of inclusive education practices in the province. This review recommended that a provincial policy be adopted to set standards and expectations on the delivery of inclusive education. In 2016, the Government of New Brunswick received the international Zero Project award for innovative policy that protects the rights of students with a disability (see: <https://zeroproject.org/policy/canadas-new-brunswick-forbids-segregated-education/>).

Policy 322 provides some detailed guidance and offers flexibility in addressing the needs of all students. This includes students spending time outside the regular classroom when this is justified. For good reason, the policy limits "alternative education" to the high school grades to support students who are close to completing their public education.

How Does Bill 35 Affect Inclusive Education?

Bill 35 is called *An Act Respecting Empowering the School System*. It contains a few sections that amend the current *Education Act* as it relates to inclusive education and education rights of students with a disability.



1. Definition of the "Common Learning Environment".

Bill 35 provides a number of changes to the definition of the "common learning environment". This definition was added to the section 1 of the Act in 2014 following the adoption of Policy 322. It provides a fundamental foundation to the concept that learning environments in NB's public school system are to be inclusive of students with mixed abilities who are of the same age and attending their regular neighbourhood school. Bill 35 proposes a few changes to this definition:

- a. It removes it from section 1 (the general definition section of the Act) and places it in section 12 of the Act regarding the placement of students who have a Personalized Learning Plan (i.e., students with a disability or behavioural challenge). The Department of Education has indicated that this change was unintended and that Bill 35 will be amended to put the definition back into section 1 of the Act. This is important as inclusion means that schools and teaching styles allow for students with different strengths and learning styles to learn together, and recognizes that none of us learn exactly the same way. Restricting this definition to affect only students with a disability is a step back to an old way of viewing children – that there are those who learn "typically" and those who are "different". Inclusion is not only about disability – it is about recognizing that each of us can have strengths and weaknesses but we are all part of the same common learning environment.

- b. We are concerned about the change in the wording around the definition of “common learning environment” in the Anglophone version of the Bill. We are particularly concerned about the change from “in their neighbourhood school” to “at neighbourhood schools”

Department leaders have given some explanation to Inclusion NB about this change. Changing “in their neighbourhood school” to “at neighbourhood schools” is designed to make the English and French definitions similar.

The rationale around making schools plural is not consistent with the original definition of “common learning environment” contained in Policy 322. In the Policy, both definitions are singular and it appears the plural in the French version was added when the definition was later brought into the Act.

Why does this matter? It appears that the original intent to express this in the singular form, rather than plural, was intentional and based on the belief that students should attend the school that is typical for other students in their local neighbourhood. This is important for a student’s sense of belonging and provides protections from students being assigned to a school based on their label, ability, or diagnosis. It also protects our inclusive education system from having schools designated to provide an education to students with disabilities or other labels or accepting private school arrangements that remove certain children from the public system.

We are requesting that the Legislature maintain the wording “in their neighbourhood school” in the Act and change the French side of the Act to make it consistent with the current English wording.

2. Alternative Education.

Under current law and policy (322) alternative education programming is allowed for some high school students, but not for students of other grades. Alternative education is seen as an appropriate program for some high school students who are at risk of not completing their high school education within the current structure.

The decision to limit alternative education programming is based on the belief that the regular system could and should provide educational services for younger students (K to 8) through access to the common learning environment, or through a “variation” of the common learning environment (where students can be outside of the regular classroom but still educationally supported within the school). This protects the rights of students in these grades to an inclusive education. When students are properly supported within their neighbourhood school, there is no strong rationale for extending alternative education beyond high school.

Bill 35 proposes some wording changes that could have a significant impact on inclusive education. Here is what these proposed changes provide:

- a. Section 48 (g.1) of the *Education Act* (dealing with the duties of superintendents) expands the availability of alternate education by removing the words “high school” in reference to the duty to provide alternative education programs and services for pupils consistent with policies established by the Minister.
- b. Section 57 (1) (n) of the *Education Act* (which provides Cabinet the power to make Regulations under the Act) removes the words “special education programs and services” and inserts the words “alternative education services”. This is in reference to the ability to make regulations for the establishment and organization of such services.
- c. Section 57 (1) (o) of the *Education Act* (also dealing with the power to make Regulations) removes the



words “special education programs and services” and replaces them with “alternative education services”. This is in reference to the “accommodation and equipment of premises used” for these services.

What do these changes signify? The intent behind these amendments appears to be the expansion of alternative education to all grade levels. Department leaders have noted to Inclusion NB that there are currently no plans to have alternative education in grades K to 5, but there is no guarantee that this will not happen at all grade levels. There are serious questions that are unanswered about the impact that this will have on New Brunswick’s inclusive education system and the rights of students with a disability to receive an education within our regular schools and classrooms. Here are some of these questions:

- Will the changes lead to the creation or the possibility of the creation of segregated learning environments either within schools or in other physical locations for students of all ages? With the removal of the restriction on alternative education to high school students, children as young as 5 years old may end up in “alternative” education programs, potentially as long-term educational placements. This would be contrary to current law and policy and undermine New Brunswick’s inclusive education system (and have potential impacts on the positive development of children that comes from inclusive learning environments).
- Who might be affected by the expansion of alternative education? As “alternative education” is not defined in the current *Education Act*, or in Bill 35, there are no parameters in legislation on who could be placed into alternative education, for what reasons and for how long. Bill 35 hints that this may be set out in Regulations under the Act, which only requires an approval by Cabinet to pass. Policy 322 contains a definition for alternative education for the high school context, which is significantly insufficient and inappropriate for grades K-8. As far as we know, there are currently no Departmental policies around alternative education for high school students. What is the reach of alternative education should the school system be “empowered” to establish and operate these environments for all school aged children?
- Will Bill 35 create a system of education that will be designed to remove or provide the possibility to remove certain children and youth from the regular learning environment and place them in alternate settings based on their disability? This is a fundamental human rights issue, yet there is no information about appropriate checks and balances and system accountability. The rights of children to an inclusive education (as required by the UN *Convention on the Rights of Persons with Disabilities*) could be seriously impacted by a Cabinet decision, or by the Minister of Education under the authority to create education policies. They could also be impacted by decisions at a district or school level to expand “alternative education” programming.
- Will having a system that allows and encourages alternative education programs intentionally or unintentionally see the potential expansion of separate education sites for children based on system-determined needs rather than the rights of children and youth? This has the potential of undoing decades of progress in building a world-class inclusive education system. What other approaches to supporting students and teachers should be considered or implemented (such as maintaining pandemic response class sizes to support more personalized learning and better class management or the embedding of services for students with behavioural and mental health challenges within our schools and classrooms)?



What about the Current Review of Policy 322?

The changes to the *Education Act* have been introduced during the current review of Policy 322 on Inclusive Education that the Department of Education and Early Childhood Development began only a few weeks ago. This review is gathering important information around the understanding and implementation of the policy to determine where we can make improvements to better support all children. Are the proposed *Education Act* changes pre-empting this review by directly changing laws that will impact current policy and practice?



Some Questions about the Future of New Brunswick's Inclusive Education System

On the surface, the changes in wording to the *Education Act* that are proposed by Bill 35 seem minor. But words mean something, and the government is going through the trouble of changing the *Education Act* for a reason. In the context of providing wider latitude to teachers, schools and districts, are the rights of students with a disability to be included in our regular education system and classrooms at risk?

We need to know the government's intent behind these proposed changes and fully understand both intended and unintended impacts and consequences for students in our public education system. What in the current *Education Act* prevents the Department from implementing their intended changes?



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