

New Brunswick
Child & Youth
Advocate



Défenseur des
enfants et des jeunes
du Nouveau-Brunswick

LEGISLATIVE ANALYSIS

Results of the Advocate's review
of proposed changes to Policy 713
by the Department of Education.

SUBMITTED TO THE LEGISLATIVE ASSEMBLY June 12th, 2023
PURSUANT TO SECTION 19(1) OF THE CHILD, YOUTH & SENIOR ADVOCATE ACT.

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Legislative Analysis — Policy 713

The Advocate has elected to apply this Office's legislative analysis service to the revised Policy 713, given its centrality to recent debate in the Assembly.

The Advocate stands by the recommendations made in our previous report. If the Sexual Orientation and Gender Identity Policy is to be reviewed by the Department, the review should be undertaken with care. The Department's explanation of the rationale for the review was incoherent. The Department had taken the necessary due care to make unequivocally clear that human rights of students are beyond dispute. And the actions of the Department had created a lack of clarity, causing fear among many students and adults.

It is recognized that as the Advocate's report was released, the Department did provide greater clarity as to the focus of the policy review and affirm that the goals were to remain. Nevertheless, there has subsequently not been the kind of clear and extensive process which would let the Advocate express clear subjective approval of any policy change with confidence.

What the Advocate can do, objectively, is review the drafting of the new version of the policy and advise Members of the Legislative Assembly where substantive changes exist. These changes can then be objectively compared to other provinces' approaches.

While the new version of Policy 713 retains goals and language which stays within the mainstream of other provincial approaches, there are deletions in the language which concern the Advocate.

SELF-IDENTIFICATION

The Advocate wishes to note that it is entirely appropriate for support of LGBTQI2S+ students to include encouragement to speak to their parents. Among a child's rights are rights to their parents' love and support. Within the parameters of student consent, safety and best interests, parent-child communication should be supported. If the Department wished to give explicit guidance to educators to explore these options with students and offer them a toolkit for talking to their parents, the Advocate would be supportive.

However, in two cases the changes remove language which is important. The result is drafting which is vague and unclear at the expense of students' rights and security.

The Advocate is unclear as to why the explicit language requiring informed student consent has been removed. The Minister's public statements have consistently stated that students will not be outed without consent, and that they can still confide in trusted educators in confidence.

If this is the intent, there is no reason for that language to be removed. In fact, its absence leaves a drafting absurdity, as the phrase "If consent cannot be obtained..." exists with no textual reference to WHOSE consent is being referred to.

Students deserve clarity that they can speak to grownups they trust in confidence. It can make the difference between a struggling child talking to someone and having that student wind up in crisis.

That language needs to be restored.

The Advocate is further concerned about the lack of guidance over what support can be given short of changing the official record. It is within the legal mainstream to have an age limit for changing official records. It is not legally or operationally normal to have silence on what can be done to support students within the school environment short of that. The policy is unclear as to whether informal kindnesses and decency are allowed or not, and this places teachers and students in a difficult spot.

We know that one of the biggest indicators of whether or not LGBTQI2S+ students experience serious mental health issues is the affirmation of those around them. “Change the record or we don’t acknowledge anything” is not a tenable policy.

On a more basic level calling people the name they wish to be called is a simple courtesy. Most provinces are clear that (within normal criteria like age and maturity of the student) we should call young people what they wish to be called. There is no reason to expect teachers to withhold the courtesy if they think it is related to gender identity. If “Terrance” wants to be called by a nickname, it would be absurd to ask teachers to agree to use “Terry” but not “Terri” because of perceptions about the motivation.

The Advocate also recommends clearer language that students are to be offered support in talking to parents but not “directed” to see the guidance counsellor. Like any of us, young people experiencing tough personal situations do not want to lose control of the process. There should not be a process where having a conversation with a trusted adult puts a student on a conveyor belt of pressure to demonstrate harm worthy of social services or be pushed into other interventions.

The goal should be to avoid creating a chilling effect where children are afraid to seek out people they trust in the school. That can be balanced with support for positive parent-child discussion whenever it is possible. The deleted language in the new Policy 713 throws that balance off.

COMMON SPACES

The Advocate notes that language consistent with Human Rights Commission directives across Canada (including New Brunswick’s Commission) has been maintained. There have also been positive comments from the Minister and Department regarding future construction that makes it easier for schools to comply and expand these areas.

While the Advocate notes that there is now a “Where possible” modifier on washroom access on activities outside the schools, the Advocate does note that there can be legitimate operational issues for school trips to facilities where the school cannot always control or verify the policies of others. Schools should always make best efforts to maximize accommodation and the Advocate trusts that this will be made clear by the Department.

EXTRACURRICULAR ACTIVITIES

It appears that the intent in this section is to defer questions around competitive extracurricular sports to governing bodies while affirming the goal of “safe and welcoming” activities. The Advocate does note that the NBIAA has managed these issues well and without complaints.

The Advocate is unconvinced there was a need to remove the explicit language regarding participation consistent with the student's gender identity. That said, the status quo does reflect those rights and the use of arms-length athletic governing bodies regulating competition is an accepted practice.

CONCLUSION

The new Policy 713 affirms and retains laudable goals and commits the Government of New Brunswick's intent and duty to protect LGBTQI2S+ students. However, we believe that the deleted language noted here could and should be restored and have not heard any explanation why the removal was necessary to achieve the government's stated policy goals.

Respectfully submitted this 12th day of June, 2023



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Advocate