



SASKATCHEWAN
advocate
FOR CHILDREN & YOUTH

DECEMBER 2023

MAKING THE GRADE

Moving Forward in Independent Education





LETTER OF TRANSMITTAL

December 2023

The Honourable Randy Weekes
Speaker of the Legislative Assembly
Legislative Building
2405 Legislative Drive
Regina, SK S4S 0B3

Dear Mr. Speaker:

Pursuant to section 14(2) and in accordance with section 28 of *The Advocate for Children and Youth Act*, it is my duty and privilege to submit to you and members of the Legislative Assembly of Saskatchewan this special report, entitled *Making the Grade: Moving Forward in Independent Education*.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Lisa Broda'.

Lisa Broda, PhD
Advocate for Children and Youth

CONTENTS

Executive Summary	2
1.0 Mandate of Advocate for Children & Youth	4
2.0 Background Context & Ministry Response	5
2.1 Background	5
2.2 Response of the Ministry of Education	6
3.0 Purpose of the Advocate's Systemic Investigation	8
4.0 Scope and Method	10
4.1 A Note on Funding	11
5.0 Independent Schooling in Saskatchewan	14
5.1 History	14
5.2 Current Operational Landscape	17
6.0 Situating Education and Independent Schooling Within a Legal and Child Rights Context	22
6.1 The Right to Education	22
6.2 Legal Foundation for the Operation and Regulation of Independent Schools in SK	23
6.3 Balancing the Right to Religious Freedom Within Independent Schools	24
6.4 The Legal Obligation for Oversight	28
7.0 Issues Examined by the Advocate	30
7.1 Local Administrative Policies and Procedures	30
7.2 Capacity of the Independent Schools and Home-based Education Unit	32
7.3 Processes of Inspection and Supervision	34
7.3.1 <i>Inspection</i>	34
7.3.2 <i>Supervision</i>	37
7.4 External Accountability and the Participation Rights of Young People	43
7.4.1 <i>The Right to Be Heard</i>	43
7.4.2 <i>Statutory and Policy Gaps Regarding the Right to Be Heard</i>	44
7.4.3 <i>Addressing Concerns within Independent Schools</i>	48
7.4.4 <i>Complaint Reporting and Response</i>	52
7.5 Safety and Protection in Education	54
7.5.1 <i>Legal Context of Corporal Punishment in Saskatchewan Schools</i>	54
7.5.2 <i>Historical Use of Corporal Punishment in Independent Schools</i>	55
7.5.3 <i>Current Discipline Policies and Ministry Oversight</i>	56
7.5.4 <i>Other Protection Measures</i>	58
7.6 Quality of Education	59
7.6.1 <i>Learning Environment</i>	60
7.6.2 <i>Teaching and Learning Processes and Materials</i>	75
7.6.3 <i>Learning Outputs</i>	96
7.7 The Right to Non-discrimination	103
7.7.1 <i>Duty to Accommodate Students with Intensive Needs</i>	105
7.7.2 <i>Non-discrimination on the Basis of Sexual Orientation and Gender Identity</i>	110
8.0 Conclusion	115
Appendix – List of Recommendations	116



Executive Summary

The Saskatchewan Advocate for Children and Youth (the Advocate) is an independent officer of the Legislative Assembly of Saskatchewan. Under the authority of *The Advocate for Children and Youth Act*, the Advocate has a broad mandate to:

- advocate for the interests of children and youth receiving provincial public services;
- investigate any matter that comes to her attention regarding the interests and well-being of young people within the provision of public services;
- engage in public education around children rights and the mandate of our office;
- conduct or contract for research to improve the rights, interests and well-being of children and youth in Saskatchewan; and,
- make recommendations or give advice to any minister responsible for services to young people.

As a voice for children and youth, and to ensure young people receive the services to which they are entitled in a manner that protects their interests and well-being, the Advocate's work is grounded in the United Nations Convention on the Rights of the Child (UNCRC). The UNCRC is a legally binding international agreement setting out the civil, political, economic, social, and cultural rights of every child without discrimination.

This report, entitled *Making the Grade: Moving Forward in Independent Education*, is a systemic examination into the Ministry of Education's oversight of the province's registered independent schools. In setting and monitoring compliance with minimum standards for independent education, the Ministry of Education provides a service to children and youth in independent schools.

This investigation was triggered by historical allegations of abuse within one school, particularly, and broader concerns pertaining to oversight, safety and protection issues, and quality of education that came to the attention of the Advocate in August 2022.

Upon learning of the circumstances pertaining to the alleged abuse, the Advocate immediately contacted the Ministry of Education to determine what steps it was taking to ensure the safety and protection of children and youth returning to school in the fall of 2022. Satisfied with the immediate measures in place, our office reviewed available information related to the allegations and concerns being raised, and the legislation, regulations, and policies regarding the oversight of registered independent schools in Saskatchewan.

Our scope centred on gaining a better understanding of the historical context of services provided by independent schools and examining the current context of service provision and oversight, accountability for the safety of children, and quality of education within independent schools. The issues reviewed pertained to processes of inspection and supervision, external accountability related to complaint mechanisms and the right of young people to participate and be heard, safety and protection of young people, quality of education related to the learning environment, teaching and learning processes, and the right to non-discrimination.

Prior to and throughout the course of this investigation, the Ministry of Education made significant changes to *The Registered Independent Schools Regulations* and corresponding policy and practice regarding the oversight of independent schools. Some of these changes were in areas that aligned with, or responded to, inquiries made by our office, other investigative bodies, and former students who came forward identifying potential service gaps and/or inconsistencies. These changes are described and discussed further in the body of the report.

As per the Advocate's mandate, we focused our efforts on determining whether any additional changes are required to ensure young people are receiving appropriate services and that the rights of children and youth are respected within independent education now and into the future.

Pursuant to sections 14 and 28 of *The Advocate for Children and Youth Act*, the Advocate can make any recommendations considered appropriate related to services provided to children by a ministry, agency of the government or publicly-funded health entity if it is determined that a decision, action, omission, or practice is unreasonable, unjust, oppressive, improperly discriminatory, or contrary to law.

As a result of our findings based on the issues reviewed, the Advocate made 36 recommendations to the Government of Saskatchewan and the Ministry of Education for improvements to: safeguard effective oversight and accountability; better enable students to raise concerns; ensure alignment of policy and practice with regulatory obligations; monitor learning output; and offer clarity on how the rights and interests of young people can be further supported in independent education while balancing the rights and freedoms of the schools and continuing to offer choice in education (see Appendix).

While changes have been made, our investigation highlights that there is still much more to do. This report endeavours to contribute to and support ongoing improvements in the government's approach to these educational issues in Saskatchewan. Our office will monitor implementation of the recommendations made through our standard processes, inclusive of requesting updates from and meeting with the Ministry of Education.



1.0 Mandate of Advocate for Children & Youth

The Saskatchewan Advocate for Children and Youth (the Advocate) is an independent officer of the Legislative Assembly of Saskatchewan. Under the authority of *The Advocate for Children and Youth Act*, the Advocate has a broad mandate to:

- advocate for the interests of children and youth receiving provincial public services;
- investigate any matter that comes to her attention regarding the interests and well-being of young people within the provision of public services;
- engage in public education around children rights and the mandate of our office;
- conduct or contract for research to improve the rights, interests and well-being of children and youth in Saskatchewan, and,
- make recommendations or give advice to any minister responsible for services to young people.

In addition to being mandated by provincial legislation, the Advocate's work is grounded in the United Nations Convention on the Rights of the Child (UNCRC). The UNCRC is a legally binding international agreement setting out the civil, political, economic, social, and cultural rights of every child without discrimination of any kind.

The UNCRC is the most widely ratified international human rights treaty in history, having been adopted by all but one UN Member State. This makes the UNCRC, and the principles it espouses, universal – spanning diverse countries, religions, languages, and cultures. Canada – with the agreement of all provinces, including Saskatchewan – ratified the UNCRC in 1991, thereby becoming legally obligated (at international law) to respect, protect and fulfill the rights of children codified within. While the application of international treaties has complexities within federal states, the UNCRC has recognized domestic legal implications for the interpretation of statutes and the exercise of any discretion under statutes.¹

Children and youth have the same rights as all people, however, are guaranteed special protections under the UNCRC because of their age, limited ability to participate in political process, and dependence upon adults to make decisions for and about them.

The UNCRC recognizes that children require nurturing and guidance as they grow and develop and that, ideally, this support should come from families and caregivers. However, all levels of government have an overarching responsibility to ensure the rights of children and youth are protected.

¹ See: *Baker v. Canada* (Minister of Citizenship and Immigration), 1999 CanLII 699 (SCC), [1999] 2 SCR 817, (Retrieved from: <https://canlii.ca/t/1fq1k>). For a recent confirmation of these principles (in general, beyond the UNCRC), see also *Mason v. Canada* (Citizenship and Immigration), 2023 SCC 21 (retrieved from <https://canlii.ca/t/k0c85>).

2.0 Background Context & Ministry Response

2.1 BACKGROUND

In early August 2022, allegations of abuse made by former students of Legacy Christian Academy (formerly Christian Centre Academy)² came to the attention of the Advocate, triggering a baseline assessment of the oversight of registered independent schools. Legacy Christian Academy is certified as a Qualified Independent School pursuant to *The Education Act, 1995* and *The Registered Independent Schools Regulations*. It is operated by Mile Two Church Inc. (formerly Saskatoon Christian Centre Church).

These allegations became the subject of a proposed class action lawsuit and led to criminal charges being laid against several individuals who held leadership, staff, or volunteer positions with the school and/or the church. These matters are currently before the courts at varying stages.

As indicated through these collective legal actions and statements made in the public discourse, former students of Legacy Christian Academy alleged experiencing psychological and physical abuse (corporal punishment), sexual abuse and exploitation, concerns with quality of education, and discrimination on the basis of disability, gender, and sexual orientation.

The Advocate acknowledges that the impacted individuals have taken the legal avenues available to them to have these critical matters addressed. While these allegations are largely historical, concerns have been raised in the public discourse regarding whether the rights of students may continue to be violated.

Any allegations of the abuse of children and youth are extremely concerning and, when coming to the attention of the Advocate, we ensure the proper authorities are informed and that the abuse is investigated. While our legislation does not extend jurisdiction to the investigation of civil or criminal matters, the issues were concerning enough to warrant an investigation into the oversight of independent schools under the Advocate's legislated mandate.

Qualified Independent Schools are one of six categories of registered independent schools (i.e. private schools) that operate in Saskatchewan and are overseen by the Ministry of Education. Qualified Independent Schools receive provincial funding at the rate of 50% the provincial per student average, are required to meet certain requirements and are inspected and supervised by the Ministry of Education. Provincial funding is provided annually to these schools to cover a portion of the costs for providing education while the remaining portion is typically covered through tuition fees.

(See Section 5 for more information on the historical and current operation of registered independent schools in Saskatchewan.)

² The allegations made largely occurred while the school was under the name Christian Centre Academy. For ease and clarity, throughout the report we will refer to the school by its current name, Legacy Christian Academy.

2.2 RESPONSE OF THE MINISTRY OF EDUCATION

The Ministry of Education (the Ministry) reported to the Advocate in August 2022 that it became aware of a police investigation into historical allegations made by former students of Christian Centre Academy/Legacy Christian Academy in late June 2022. The Ministry stated that it had not received any complaints or allegations regarding the school prior to this time. Ministry officials confirmed that a criminal investigation was sitting with the Saskatoon Crown Prosecution.

Saskatchewan Professional Teachers Regulatory Board (SPTRB) is a separate body from the Ministry of Education that was established by *The Registered Teachers Act* in 2015 to make teaching in Saskatchewan a self-regulated profession. It has the power to assess qualifications and grant licences to professional teachers, regulate their conduct and impose disciplinary measures. Qualified Independent Schools are required by provincial regulation and policy to employ teachers who are licenced and registered with the SPTRB.

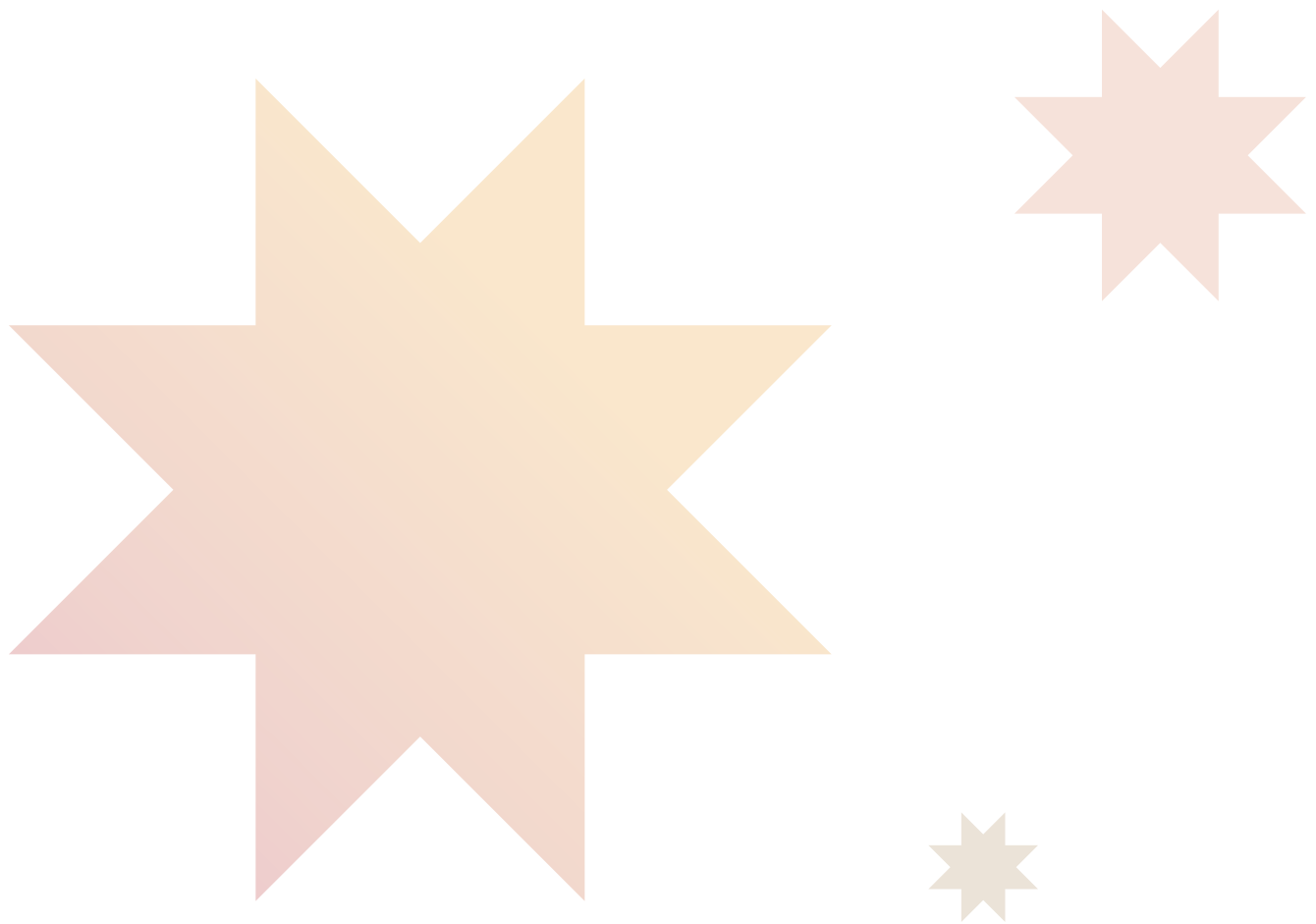
While the Ministry reports that it reviewed all paper and electronic records, it took no further action specific to the school or its staff until it received the proposed class action lawsuit Statement of Claim in early August identifying the names of the accused individuals.³ Upon becoming aware of the names of these individuals, the Ministry referred the matter to the Saskatchewan Professional Teachers Regulatory Board (SPTRB). The SPTRB launched an investigation into allegations of professional misconduct against the three individuals named in the Statement of Claim that held current certificates to teach in Saskatchewan. These individuals signed voluntary agreements to cease teaching activities pending the conclusion of the investigations. At the time of writing, these processes were still underway. There is no professional regulatory body to which the other individuals named in the Statement of Claim – such as school directors, athletic coaches, or non-professional teaching staff – could be referred for investigation.

The Ministry stated it reviewed staff, volunteer, and board member lists for registered and qualified independent schools for the upcoming 2022-23 school year and determined that no one else named in the proposed class action lawsuit would be working or volunteering in an independent school for that academic year.

Prior to the beginning of the 2022-23 school year, and again in March 2023, the Ministry of Education amended *The Registered Independent Schools Regulations* giving the Minister additional powers of oversight towards independent schools. Among these changes included the ability to appoint an official trustee to “conduct the affairs of a registered independent school” and to perform the duties of the school board for any period of time the Minister considers necessary. Official trustees were appointed to oversee the operation of Legacy Christian Academy and two other Qualified Independent Schools that employed individuals named as defendants in the proposed class action lawsuit. In one case, where leadership of the school refused to cooperate with the official trustee, the Ministry cancelled its certificate of registration, and the school was closed.

The Ministry also increased the number of unscheduled visits to all Qualified Independent Schools for the 2022-23 academic year, which included increasing the number of full-time, permanent staff to facilitate this additional work. While not reflected in policy, the Ministry reports that increased supervision is expected to continue for the foreseeable future. In October 2023, the Ministry updated its Registered Independent Schools Policies and Procedures Manual and template forms to reflect the new regulatory requirements.⁴ The Ministry reports that several of these changes had been contemplated prior to the allegations coming to light.

The Advocate acknowledges the significant changes that have been made by the Ministry regarding the oversight of independent schools during the course of our investigation. These changes will be described and discussed further in later sections of this report.



³ The Advocate notes that the Ombudsman Saskatchewan has reported that its office received and reviewed a complaint from a former student regarding the Ministry's response to abuse allegations. The conclusion of that matter is discussed further in Section 7.4.4 of this report.

⁴ Both the 2019 and 2023 versions of The Registered Independent Schools Policy and Procedures Manual are referenced throughout this report. Unless specifically stated otherwise, references to the 2019 version remain the same in the 2023 version.

3.0 Purpose of the Advocate's Systemic Investigation

Upon learning of the circumstances pertaining to the alleged abuse, the Advocate immediately contacted the Ministry of Education to determine what steps it was taking to ensure the safety and protection of children and youth returning to school in the fall of 2022. Satisfied with the immediate measures in place, our office reviewed available information related to the allegations and concerns being raised, and the legislation, regulations, and policies regarding the oversight of registered independent schools.

The Advocate's preliminary inquiries led to further questions related to how oversight mechanisms required by regulation and policy were put into practice, whether there existed any gaps that could lead to – or fail to prevent – rights violations of students and, if so, whether the changes introduced by the Ministry would be sufficient to address them. The Advocate determined that an independent review from a child rights lens, with the potential for recommendations to strengthen these processes if required, was in the public interest. It was on this basis that our office launched a systemic investigation. Further to sections 14 and 28 of *The Advocate for Children and Youth Act*, the Advocate can make any recommendations considered appropriate related to services provided to children by a ministry, agency of the government or publicly funded health entity if it is determined that a decision, action, omission, or practice is unreasonable, unjust, oppressive, improperly discriminatory, or contrary to law.

This report is not intended to encompass a full system-wide review into every aspect of the operations of independent schools. The aim of our investigation was to examine how the Ministry proactively assesses and ensures protection of the rights of children and youth within independent schools under its regulation, and whether there are gaps in its oversight processes. This aim is balanced with the need for families to have options for the education of their children, and the constitutional and human rights of independent schools to exist.

Acknowledging that much of the information to be discussed in this report has already been brought into the public discourse, the independently verified information discussed here offers rationale and evidence for the recommendations made.

The Advocate recognizes and acknowledges that there are many philosophical questions about the separation of church and state currently being debated in the public discourse on the matter of independent schools. This report does not attempt to address all these questions, nor is it the role of the Advocate to do so except in the very select circumstances where the child rights treaties and framework is clear. Many of these questions involve a delicate and complex balancing of rights and we act with due diligence to address this balance where possible.

Additionally, the Advocate emphasizes that concerns with the safety and quality of education provided to students is not limited to registered independent schools. The public and separate education systems are not without their own risks to children and youth. Abuses of students by teaching staff or other people in positions of authority in these schools also occur. As such, the Advocate notes that there may be further work to be done by all educational systems to ensure our schools are safe, nurturing environments where children can learn, grow, and develop to their fullest potential.



4.0 Scope and Method

To be clear, the Advocate does not have jurisdiction over criminal matters and cannot make findings of civil liability for past actions. The individuals involved have taken these allegations to the proper authorities. The Advocate also does not have jurisdiction over the activities of religious or other non-profit and private organizations that own many of the independent schools. The Advocate's jurisdiction is limited to those services provided under *The Education Act, 1995* and its Regulations.

Based on this mandate, our scope centred on gaining a better understanding of the historical context of services provided by independent schools, examining the current context of service provision and oversight, and whether any changes are required to ensure the rights of children and youth are respected within these schools now and into the future.

Throughout the course of our investigation, the Ministry of Education was also conducting its own assessment of practices and procedures related to independent schools and concurrently implementing changes. Some of the changes implemented evolved from the questions and issues raised by our office, other investigative bodies and the former students who have come forward identifying potential gaps and/or inconsistencies. Accordingly, this report includes an examination of the changes made to date and whether they are sufficient to respect, protect, and fulfill the rights of children in the education system going forward.

This report is the result of a review of provincial legislation, regulation, and policy applicable to registered independent schools. Where appropriate, the Advocate assessed processes of oversight and accountability for independent schools against those occurring within the public and separate systems. Our process also included interviews with Ministry officials responsible for the oversight of independent schools, reviews of administrative files and course material utilized in a sample of both religiously-based and non-religiously-based independent schools, as well as a cross-jurisdictional scan of independent school regulatory and policy frameworks across the country. The Advocate also consulted with experts in constitutional law and human rights.

In examining these issues, we determined that several matters concerning the delivery of government services in this context met the requirements and legal threshold for reporting and making recommendations, as outlined in section 28 of *The Advocate for Children and Youth Act*. The Ministry of Education was provided with an opportunity to review the findings and recommendations, and to make representation to our office on the facts presented.

4.1 A NOTE ON FUNDING

The question of whether independent schools ought to receive funding from the province has been referenced repeatedly in the public discourse. There have been many arguments made both for and against this practice.

The international norms on these issues as reflected in the *Abidjan Principles: Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*, specify that “[t]he right to education does not entail an obligation for the State to fund private instructional educational institutions.”^{5,6} These Principles emphasize that States must prioritize funding for public education, and that public funding of private educational institutions should be endorsed only in very specific circumstances. In this regard, the Abidjan Principles specify that States must “only fund eligible private instructional educational institutions, whether directly or indirectly [...] if they comply with applicable human rights law and standards and strictly observe all substantive, procedural, and operational requirements.”⁷ The Principles further state that funding should only be temporary until the State can take over the education-related need the private institution fulfilled, and that the allocation of this funding cannot be discriminatory. It must be noted that these Principles, while persuasive, are not binding on Canada or Saskatchewan.

In the Canadian context, while independent schools can operate in all Canadian provinces, partial government funding is provided only in British Columbia, Alberta, Manitoba, Quebec, and Saskatchewan.

The Supreme Court of Canada and the United Nations Human Rights Committee⁸ have considered the issue of government funding for independent schools as far as it is tied to public funding of Roman Catholic and Protestant separate schools. In Canada, funding to separate schools is protected through section 93 of the Constitution and related case law.^{9,10} This protection is made applicable to separate schools in Saskatchewan via subsection 17(2) of *The Saskatchewan Act, 1905*. It does not apply to schools operated by other faiths. Private religious schools have argued that this constitutes discrimination on the basis of religion pursuant to section 15 of the *Canadian Charter of Rights and Freedoms* (the Charter).

⁵ *The Abidjan Principles – Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*. (2019). (Retrieved from: <https://www.abidjanprinciples.org/>). Principle 64

⁶ The Abidjan Principles were developed by a group of 57 eminent independent human rights and education experts from around the world. Notably, the Chair of the Drafting Committee was Ann Skelton, member of the Committee on the Rights of the Child – but acting in her personal capacity. The principles were created to address the changing realities and growing challenges of private education that had been referred to by numerous UN human rights treaty bodies in general comments and concluding observations, as well as within growing domestic jurisprudence. The Abidjan Principles provide States with a way of addressing and resolving the tensions that often arise in education policy debates where private interests and the right to education conflict.

⁷ *The Abidjan Principles – Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*. (2019). (Retrieved from: <https://www.abidjanprinciples.org/>). Overarching Principle 5

⁸ The United Nations Human Rights Committee is the treaty body responsible for monitoring adherence to the International Covenant on Civil and Political Rights, which Canada ratified in 1976.

⁹ Reference re Bill 30, An Act to Amend the Education Act (Ont.), [1987] 1 S.C.R. 1148. Para 59-56 (Retrieved from: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/228/index.do>)

¹⁰ Ontario English Catholic Teachers’ Assn. v. Ontario (Attorney General), [2001] 1 S.C.R. 470, 2001 SCC 15 (Retrieved from: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1851/index.do>)

This argument has not been successful at the domestic level, as the Supreme Court has ruled that one section of the Charter cannot be used to invalidate another provision of the Constitution.¹¹ The Court further stated that this is especially applicable to section 93, as it represents “a fundamental part of the Confederation compromise.”¹² The UN Human Rights Committee considered this question, ruling that fully funding Roman Catholic and Protestant separate schools while denying full funding to other religious schools is discriminatory. The Committee rejected the government’s argument that the discrimination was justified by the Constitution stating that the rationale for the protections granted to Roman Catholics and Protestants at the time of confederation are no longer relevant in Canadian society, as those communities are no longer in a disadvantaged position in comparison to members of other religious faiths.¹³ If the UN Human Rights Committee’s decision were to be followed, it would mean either amending the Constitution to discontinue funding to separate schools, or funding all religious schools equally. While Canada is legally bound to fully implement the International Covenant on Civil and Political Rights, the Committee’s decision is not legally enforceable in Canada.

The Ontario Superior Court has considered the opinion of the United Nations Human Rights Committee. The court acknowledged that the Committee’s decision “is a signal from the United Nations that s.93 of the Canadian constitution offends international human rights norms,” and that, while “persuasive in Canadian courts,” cannot be used to automatically amend or repeal constitutional provisions. Due to the protection of separate school funding by the Constitution, only the government – rather than the courts – can remedy this situation. Therefore, the court concluded that – if this were determined to be a problem – the only solution would be political action to amend the Constitution.¹⁴ If this were to be implemented in Saskatchewan, it would be possible for the provincial and federal governments to make an agreement to amend *The Saskatchewan Act, 1905*. Similar action has been taken in recent years in the provinces of Quebec and Newfoundland and Labrador.

However, if the Government of Saskatchewan chooses to continue funding Roman Catholic and Protestant separate schools, in light of the notion that a denial of funding to other religious schools could constitute discrimination (but for section 93 of the Constitution), the government may be mitigating – to some extent – potential discriminatory impacts by providing at least partial funding to other religiously-based independent schools.

For all these reasons, the Advocate will not comment on whether registered independent schools should receive public funding.

Rather, the Advocate takes the position that – regardless of whether the provincial government chooses to fund independent schools – these schools provide a compulsory service to children and youth and are obligated to respect their full spectrum of human rights. Under the United Nations Convention on the Rights of the Child and *The Saskatchewan Human Rights Code, 2018*, the Government of Saskatchewan is responsible for ensuring this occurs.

This onus will be described further throughout this report, but is clearly identified within the Abidjan Principles, which declare:

States must put in place adequate mechanisms to ensure they are accountable for their obligations to respect, protect and fulfil the right to education, including their obligations in the context of the involvement of private actors in education.¹⁵

It is from this perspective that we frame our findings and recommendations.



¹¹ Adler v. Ontario, [1996] 3 S.C.R. 609 (Retrieved from: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1446/index.do>)

¹² Reference re Bill 30, An Act to Amend the Education Act (Ont.), [1987] 1 S.C.R. 1148. Para 62.

<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/228/index.do> Retrieved 13 April 2023

¹³ Waldman v. Canada (CCPR/C/67/D/694/1996) (Retrieved from: <https://juris.ohchr.org/casedetails/839/en-US>)

¹⁴ Landau v. Ontario (Attorney General), 2013 ONSC 6152 (CanLII). Para. 34

(Retrieved from: <https://www.canlii.org/en/on/onsc/doc/2013/2013onsc6152/2013onsc6152.html?resultIndex=3>)

¹⁵ *The Abidjan Principles – Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education.* (2019). p. 7 (Retrieved from: <https://www.abidjanprinciples.org/>) p. 7.

5.0 Independent Schooling in Saskatchewan

5.1 HISTORY

Private elementary and middle schools existed in Saskatchewan prior to the establishment of the first public school in 1884. Private high schools were first established in the early 1900s in places where public secondary education was not available.¹⁶

When full public funding was implemented for Roman Catholic separate high schools in the 1960s, the Government of Saskatchewan opted to extend a measure of funding to the nine private high schools in existence through a per pupil operating grant. There was no legal obligation on the government to do so. However, as these schools had long conformed to provincial curriculum, employed certified teachers, and were seen as “instrumental in providing effective secondary education to large numbers of Saskatchewan students” it was believed that to exclude them from funding would be insensitive and discriminatory.¹⁷ Alternative schools began operating with public funding in the 1970s to serve students with disabilities or who were otherwise “at risk” of not succeeding in the educational system.¹⁸

“Private schools” were first identified in *The Education Act, 1978*. These schools had to be approved by the Director of Education of a school division in order to exempt students from attendance at a public or separate school. There were no standard criteria guiding these approvals. The Act stated that all private schools were “subject to any inspection the minister considered necessary” and permitted the Minister to request information regarding pupils, teachers, curriculum, facilities, and equipment. However, there were no regulations providing for any specific oversight of the operation of private schools in Saskatchewan.

Between 1975 and 1985, approximately thirty private religiously-based schools were established in protest to the public system which some families felt contradicted the traditional values and practices taught at home. Similar growth was happening in other jurisdictions in Canada. Provincial governments – including the Government of Saskatchewan – delayed their response to the creation of these schools in anticipation of an impending Supreme Court of Canada decision in *R v Jones* which was hoped to provide guidance on the powers, responsibilities and limitations of both private schools and the government.¹⁹

The Supreme Court of Canada released its decision in *R. v. Jones* in 1986, confirming that private religiously-based schools had a constitutional right to exist. The Supreme Court also ruled that it was a reasonable limit on the freedom of religion and conscience for the State to ensure students receive “efficient instruction” by approving these schools.

However, the Supreme Court stopped short of ruling on how far provincial governments could go in imposing criteria for approval or conditions on instruction.

By 1987, there were 48 private schools operating in the province, with approximately 3000 students enrolled. At that time, the public had concerns about the quality of education provided in private schools that did not follow the provincial curriculum or employ certified teachers. Some private schools, including the nine high schools that received public funding, were regularly inspected. However, it was noted that the Directors of Education were reticent to supervise religious schools that did not teach the Department's curriculum. Combined with the lack of a regulatory framework laying out specific responsibility for oversight, this resulted in some private schools operating in a vacuum.²⁰

At that time, the Saskatchewan Department of Education commissioned Gordon Dirks to conduct a review examining whether private schooling should be permitted in Saskatchewan and, if so, what controls should be imposed by the province.

The resulting report entitled, *A Review of Private Schooling in Saskatchewan*, was released in September 1987 concluding that students in private schools were generally receiving a satisfactory education, but that Saskatchewan lacked proper regulations to ensure private schools were periodically inspected and that satisfactory instruction was being offered. It was recommended that regulations be developed placing the onus of inspection on the (then) Department of Education and identifying specific criteria to be used.

In response to the Dirks' Report, the government amended *The Education Act* in 1989 to refer to "independent schools" rather than "private schools" and required these be "registered" with the Department of Education. The government announced regulations would be established to clarify the legal status of independent schools, confirm student obligations around compulsory attendance, and ensure high quality education. The government created the Independent Schools Branch within the Department of Education and created the Minister's Advisory Board on Independent Schools to consider and develop regulations.

The Advisory Board was comprised of representatives of the public education system, independent schools, the post-secondary and employment sectors, the Department of Education, and a legal advisor. The Minister of Education set out several guiding principles to be followed by the Advisory Board when making its recommendations. These principles included, but were not limited to, the recognition that independent schools have a right to exist, but that the government has a compelling interest in the education of all Saskatchewan children and, therefore in the registration and regulation of independent schools; that independent schools must provide a quality of education comparable to that of public schools; and that they must not promote values which conflict with the rights, freedoms and moral principles on which our society is based.

¹⁶ Minister's Advisory Board on Independent Schools. (1990). *Final Report to the Minister of Education*. Saskatoon, SK: Author.

¹⁷ Dirks, G. (1987). *A Review of Private Schooling in Saskatchewan*. Regina, SK: Author. p. 57

¹⁸ Minister's Advisory Board on Independent Schools. (1990). *Final Report to the Minister of Education*. Saskatoon, SK: Author.

¹⁹ Minister's Advisory Board on Independent Schools. (1990). *Final Report to the Minister of Education*. Saskatoon, SK: Author. p. ii

²⁰ Dirks, G. (1987). *A Review of Private Schooling in Saskatchewan*. Regina, SK: Westcon Management Services Inc.

The Advisory Board identified its own additional principles arising from the constitutional and legal framework applicable to independent schooling that would guide its recommendations. These included, but were not limited to, recognition that the relationship between the government and independent schools should recognize the freedom of conscience and religion, and that this freedom is only subject to limits prescribed by law that can be demonstrably justified in a free and democratic society.

The Advisory Board “endeavored to recommend regulations, policies and procedures that would appropriately balance the interests of children enrolled in independent schools, their families and the public at large.”²¹

The Advisory Board released its final report and recommendations in November 1990. To reconcile the principles grounding its work, the Board’s foundational recommendation was the creation of distinct categories of independent schools with increasing levels of benefits in exchange for increased requirements.

Other recommendations to the Minister of Education pertained to qualifications of teachers, operations and governance, goals of education and curriculum, health and safety standards, duties of the Department of Education related to inspection and supervision, and cancellation of teaching eligibility or school registration. The recommendations of the Advisory Board were generally accepted and built into *The Independent Schools Regulations* that came into force in 1991.

Prior to 2011, oversight of independent schools was shared amongst several regional offices across the province, each with their own staff responsible for inspections of the independent schools in their area, as well as for working with local school divisions. More robust supervision of independent schools was not conducted at this time. In November 2010, a full-time director was hired to consolidate the regulatory oversight, which resulted in the elimination of regional offices and centralization of the Independent Schools and Home-based Education Unit (ISHBE Unit) in Regina, Saskatchewan.

In 2012, with changes to *The Independent Schools Regulations* and *The Education Funding Regulations*, the new category of Qualified Independent Schools was introduced, making these schools eligible to receive operating grants from the government.²² With this funding came increased oversight and supervision from the Ministry of Education for those schools that received it.

In 2018, *The Independent Schools Regulations* were repealed and replaced with *The Registered Independent Schools Regulations* to offer more clarity to various terms and processes that were in place.

The Minister’s Advisory Board’s 1990 *Final Report to the Minister of Education* comprehensively explored domestic human rights legislation, including the *Canadian Charter of Rights and Freedoms* and *The Saskatchewan Human Rights Code*, and applicable international human rights treaties binding on Canada. The Advisory Board even considered the, then draft, United Nations Convention on the Rights of the Child (UNCRC).

²¹ Minister’s Advisory Board on Independent Schools. (1990). *Final Report to the Minister of Education*. Saskatoon, SK: Author. p. ii

²² Order in Council 416/2012 (Retrieved from: <https://publications.saskatchewan.ca/#/products/64472>)

While the forethought of the Board in this regard is notable, its *Final Report* was based on the growing knowledge of children's rights at that time. Societal attitudes and understandings of the application of the child rights framework have evolved substantially. However, the regulatory and policy framework laid out by the Advisory Board has not been significantly re-evaluated against the child rights framework since then. The Ministry of Education is now undertaking this work. The Advocate urges the Ministry to incorporate the findings and recommendations of this report into that process.

5.2 CURRENT OPERATIONAL LANDSCAPE

An independent school is a school that is owned and operated by a person or an organization other than a public authority or the government, however, all independent schools must be registered with the Ministry of Education. It is a violation of section 363 of *The Education Act, 1995* and sections 3 and 38 of *The Registered Independent Schools Regulations* to operate an unregistered school for children of compulsory school age (i.e. 6 to 15 years), or that purports to offer secondary level credit courses.

In the 2022-23 academic year, there were 5,766 students enrolled in 63 registered independent schools in Saskatchewan. As of March 2023, there are six different categories of independent schools:

- Registered Independent Schools (unfunded)
- Historical High Schools
- Associate Schools
- Alternative Schools
- Qualified Independent Schools
- Certified Independent Schools (category officially established in March 2023)²³

Any person or organization is eligible to register an independent school with the Ministry of Education if basic criteria are met (see text box below), however, this does not mean that a registered independent school will receive provincial funding. There is no expiration date and no requirement to renew a certificate of registration, but all registered independent schools are required to submit an Annual Return every September confirming and/or updating the information on their initial registration form (i.e. names of board members and teachers, number of students enrolled and so on). The Minister of Education has the ability to suspend or cancel the certificate of registration of any school, if warranted.

Any independent school may charge tuition for attendance. The only category that does not receive any public funding is Registered Independent Schools. All other categories receive various levels of public funding either through operating and capital grants from the provincial government or through service agreements with the Ministry of Education or a school division.

²³ Prior to March 2023, one school had been conditionally operating as a Certified Independent School following the Minister's 2022 budget announcement signaling the impending creation of the category. However, regulations were not finalized until March 2023. Accordingly, the data related to this school is incorporated with that for Qualified Independent Schools throughout this report.

The Independent Schools and Home-based Education Unit (ISHBE Unit) of the Ministry of Education is situated within the Programs Branch and is primarily responsible for the oversight of registered independent schools.²⁴

Levels of, and responsibilities for, oversight differ depending on the category of school.

All categories of registered independent schools are required by regulation and/or policy to:

- provide instruction as per the number of days in a school year and meet the number of instructional hours required by the province;
- enrol students from three different families between the ages of 6 and 21 on a full-time basis;
- provide instruction in the required areas of study, as determined by the Minister;
- be incorporated in Saskatchewan;
- have a Board consisting of a minimum of three adults from three different families;
- have a principal and director (may be the same person, except in Certified Independent Schools);
- meet provincial health, safety, and fire standards;
- provide the Ministry of Education with an Annual Return identifying number of students, board members and teachers;
- develop an attendance policy and maintain records of student attendance;
- notify the Ministry of Education if a student is suspended for more than 10 days; and,
- require all staff to submit criminal record/vulnerable sector checks.²⁵

Registered Independent Schools (Unfunded):

- must meet the basic eligibility criteria outlined for all independent schools;
- do not receive funding from the Ministry of Education;
- must have Goals of Education that are “not inconsistent” with the Goals of Education for Saskatchewan (i.e. but are not required to subscribe to the provincial Goals of Education);
- are not required to follow the Saskatchewan Core Curriculum;
- are required to provide instruction in the required areas of study (arts education, health education, language arts, math, physical education, science, and social studies);
- are not required to employ registered teachers in religiously-based schools at the elementary level, but individuals must apply for a Letter of Eligibility to teach (see Section 7.6.1.2 for more information);
- in order to offer secondary level courses, the courses must be approved by the Ministry and taught by registered teachers;
- must employ registered teachers in all grade levels in non-religiously based schools; and,
- must be inspected annually by the Ministry of Education, but were not previously supervised unless they offer secondary level credits, are pursuing teacher accreditation, or request supervision.²⁶

Associate Schools:

- must meet the basic eligibility criteria outlined for all independent schools (other than inspection by the Ministry and requirements to report to the Ministry, as oversight is conducted by school divisions);
- to qualify for associate school status, the school:
 - must have been in operation for at least two years; and
 - must have an acceptable operating agreement with a school division – the Ministry of Education is not a party to this agreement;
- teachers are employed by the school division and the Associate School board provides the building, maintenance, and course materials beyond those associated with the provincial curriculum;
- all oversight is provided by the school division;
- funding flows through the school division's budget at 80% of the provincial per student average; and,
- adhere to the same teaching and curriculum requirements as the school division.

Historical High Schools:

- were established as "schools of necessity" at a time when public high schools were not always available;
- include only those five high schools²⁷ currently listed in section 8 of *The Registered Independent Schools Regulations* (no new schools will be added to this list);
- are funded because of the long-standing historical arrangements that were continued when legislation for independent schools was enacted in 1989;
- must meet the basic eligibility criteria outlined for all independent schools;
- receive 80% of the provincial per student average in operating grants, and are eligible to receive up to 20% of recognized capital costs;
- require only the principal to hold a valid Professional A teaching certificate, as per regulation;
- must employ registered teachers (any category), however have traditionally employed teachers that hold a valid Professional A Certificate;
- offer secondary level credit courses that must be approved by the Ministry as being academically equivalent to provincially developed courses; and,
- are currently inspected and supervised by locally approved supervisors, rather than the Ministry of Education (with one recent exception), who must meet the qualifications of a Director of Education within the provincial system.

²⁴ This does not include Associate Schools, which are overseen by school divisions, and Historical High Schools, which have their own local supervisory officials. Ministry supervisory officials inspect Alternative Schools, but do not supervise them, as supervision is conducted by a locally approved supervisor.

²⁵ The Registered Independent Schools Policy and Procedures Manual. (2019). p. 3

²⁶ With amendments made to *The Registered Independent Schools Regulations* in August 2022, the Minister of Education can now supervise unfunded registered independent schools at its discretion.

²⁷ Briercrest Christian Academy is listed in section 8 of the Regulations as a Historical High School but is now operating as an Associate School under the Prairie South School Division.

Alternative Independent Schools:

- must meet the basic eligibility criteria outlined for all independent schools;
- typically provide education programs and services to students who are wards of the province or whose education is otherwise “at risk” in typical educational environments (these students and their families may require a wide range of supports and services provided by various human service agencies and ministries);
- are funded based on need through service agreements between the Ministry of Education and the agency providing the educational services;
- the principal must hold a valid Professional A Certificate;
- must have registered teachers (any category);
- must subscribe to the Goals of Education for Saskatchewan;
- implement the Saskatchewan curriculum and approved courses;
- are inspected annually by the Ministry of Education, but not supervised; and,
- are supervised by a locally approved supervisor who must meet the qualifications of a Director of Education within the provincial system.

Qualified Independent Schools:

- must meet the basic eligibility criteria outlined for all independent schools, and:
 - be incorporated as a non-profit corporation in Saskatchewan; and,
 - have been in operation for a minimum of two years;
- are funded at 50% of the provincial per student average;
- employ Professional A certified principal and teachers (1 for every 40 students);
- subscribe to the Goals of Education for Saskatchewan;
- implement Saskatchewan curriculum and approved courses;
- participate in provincially mandated student assessments;
- are inspected annually and supervised three times per year by the Ministry of Education;²⁸ and,
- submit annual financial statements to the Minister.

Certified Independent Schools (new category as of March 2023):

- must have operated as a Qualified Independent School for a minimum of five years prior to being eligible for registration as a Certified Independent School;
- must continue to meet all requirements of a Qualified Independent School;
- implement Saskatchewan provincial curricula and approved courses;
- all core resources are approved by the Ministry and reviewed every five years;
- enrol a minimum of 150 students;
- are funded at 75% the provincial per student average;
- participate in provincially mandated student assessments;
- employ Professional A certified principal and teachers (1 for every 25 students);
- must pay teachers at least 90% the rate of pay in the provincial system;
- submit annual financial statements to the Minister; and,
- are inspected annually and supervised three times per year by the Ministry of Education.²⁹

School Category	Number of Schools in 2022-23	2022-2023 Enrolment Numbers (Headcount) ³⁰
Qualified Independent Schools	19	1,654
Alternative Schools	8	261
Associate Schools	10	2,545
Historical High Schools	4	849
Unfunded Registered Independent Schools	22	457
Certified Independent Schools (NOTE: These values are also included in the QIS Enrolment as the CIS category was not official until March 2023.)	1	252
Totals	63	5,766



²⁸ Enhanced supervision was occurring at the time of writing.

²⁹ Enhanced supervision was occurring at the time of writing.

³⁰ Enrolment includes all Kindergarten to Grade 12 students - both Saskatchewan residents and non-Saskatchewan residents. Funding in applicable schools is only granted to Saskatchewan residents, but the Ministry advises headcount numbers are utilized for determining teacher to student ratios, etc.

6.0 Situating Education and Independent Schooling Within a Legal and Child Rights Context

6.1 THE RIGHT TO EDUCATION

Under **Article 28** of the United Nations Convention on the Rights of the Child (UNCRC) children have a right to free and compulsory primary education – in some form. UNCRC **Article 29** affirms a child’s right to education that is of good quality, facilitates their optimal development and develops respect for human rights and fundamental freedoms. **Article 4** directs that States must “undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.” This includes within education. Pursuant to **Article 2** of the UNCRC, every level of government in Canada has an obligation to ensure the rights of all children and youth are protected without discrimination of any kind.

Provincially, these education-related rights are codified in *The Education Act, 1995* and *The Saskatchewan Human Rights Code, 2018*.

With respect to compulsory primary education, sections 156, 157 and 158 of *The Education Act, 1995* place a legal obligation on any parent, guardian, or other person responsible for a child aged 6 to 15 years to ensure they attend an approved educational program, subject to certain mitigating factors.³¹ Section 150 extends this responsibility to students, requiring them to “attend school regularly and punctually.” While not compulsory, *The Education Act, 1995* (section 142) also affirms the right of every person under the age of 22, should they choose, to attend school or receive instruction in a program operated or approved by a school division or board of education.

Educational programs approved pursuant to *The Education Act, 1995* include schools authorized by a public or separate school division or the Conseil scolaire fransaskois, a registered independent school, or a registered home-based program. As per the scope outlined above, this review focuses on registered independent schools.

6.2 LEGAL FOUNDATION FOR THE OPERATION AND REGULATION OF INDEPENDENT SCHOOLS IN SASKATCHEWAN

Section 2 of *The Education Act, 1995* defines independent schools as institutions that are “controlled and administered by a person other than a public authority.” Section 370 of the Act permits the province to make regulations governing the establishment, classification, administration, and suspension/deregistration of independent schools.

The Government of Saskatchewan, through the Ministry of Education, regulates the operation of independent schools through *The Registered Independent Schools Regulations*. It is an offence under section 363 of the Act to operate any independent school that is not registered with the Ministry of Education. Through *The Education Funding Regulations, 2018*, the province provides various levels of funding to certain classifications of independent schools.

Regarding the right to non-discrimination, independent schools in Saskatchewan are subject to *The Saskatchewan Human Rights Code, 2018*. Sub-section 13(1) of the Code guarantees to every person the right to education in any school or “other institution or place of learning” without discrimination. Therefore, the provincial government, as represented by the Ministry of Education, has a responsibility to ensure that all educational services provided pursuant to *The Education Act, 1995* and its Regulations, respect, protect and fulfill the rights of children and youth under the UNCRC and *The Saskatchewan Human Rights Code, 2018* (the Code) whether they attend a public, separate, or independent school, or other approved educational program.

One exception to this is that subsection 13(2) of the Code and section 36 of *The Registered Independent Schools Regulations* permit educational institutions to restrict enrolment on the basis of sex, creed, religion, or disability if the school is established for the express purpose of serving individuals with those characteristics. The Advocate notes that the wording of subsection 13(2) in the Code is somewhat vague and, on its own, could be interpreted as allowing broader exclusions than were intended. However, it is the understanding of our office that interpretation of the Code’s intent, according to case law, would not support more general enrolment restrictions. While outside the scope of this particular review, this issue may require further discussion with the Ministry of Justice.

The Registered Independent Schools Regulations reaffirm the ability of independent schools to restrict enrolment on certain grounds under the Code, with the addition of “educational philosophy.” While the Regulations address the ambiguity in the Code to some extent, the need for further clarity in this regard will be discussed in Section 7.7 on “The Right to Non-discrimination.”

³¹ Section 157 of *The Education Act, 1995* does outline some mitigating circumstances under which there are no legal ramifications for non-attendance at school. Some of these include illness, extended travel, engagement in an approved work experience program, observation of a holy day of the religion of which the student is a member, and so on. In regard to cost, section 142 and 143 of *The Education Act, 1995* direct that the cost of schooling shall be born by the school division or Conseil scolaire fransaskois.

6.3 BALANCING THE RIGHT TO RELIGIOUS FREEDOM WITHIN INDEPENDENT SCHOOLS

Many, although not all, registered independent schools have been developed to provide families with a choice for children to be educated in a manner that respects their religious identity, beliefs, and values. In the multicultural context of our province, this choice is important and in alignment with the child rights framework. However, it must be recognized that expectations for and obligations of independent schools have evolved since their inception as the human and child rights framework has evolved.

As early as 1978, *The Saskatchewan Bill of Rights Act* recognized and protected the right to freedom of conscience, which includes the freedom of opinion and belief, and the freedom of religious association, teaching, practice, and worship. This Act also codified the right to education without discrimination – although the recognized prohibited grounds of discrimination at that time were not as robust as they are now. *The Saskatchewan Bill of Rights Act* permitted religious schools to limit enrolment on the basis of religion.

At that time, government oversight of independent schools across the country was minimal. In 1986, in the case of *R v Jones* [1986]³², the Supreme Court of Canada (SCC) considered the constitutionality of Alberta's *School Act*. That Act permitted home-based education and the establishment of private schools, providing the province certified the school after determining whether pupils were receiving "efficient instruction."

In this case, the SCC considered whether the requirement of certification or approval by the province violated rights to freedom of religion (ss. 2(a)) and liberty (s. 7) under the *Charter of Rights and Freedoms* (the Charter). The SCC held that although certification or approval by the province constituted some interference with the right to religious freedom, this interference was a "reasonable limit[...] demonstrably justified in a free and democratic society" under s. 1 of the Charter. The SCC determined that education was imperative for a young person to succeed, therefore, the State has a compelling interest in the education of its citizens – whether this be from an economic, social, cultural, or civic point of view. It found the provisions of Alberta's *School Act* to be a "legitimate legislative scheme to assure a reasonable standard of education."

The SCC stopped short of considering "[h]ow far the province could go in imposing conditions on the way the appellant provides instruction" or "the extent to which requirements to obtain certification or approval may go," because the appellant had not actually been denied certification or approval. The SCC decision cautioned that:

In determining whether pupils are under "efficient instruction", it would be necessary to delicately and sensitively weigh the competing interests so as to respect, as much as possible, the religious convictions of the appellant as guaranteed

by the *Charter*. Those who administer the province’s educational requirements may not do so in a manner that unreasonably infringes on the right of parents to teach their children in accordance with their religious convictions. The interference must be demonstrably justified.³³

The SCC decision stated that “there can be no precise definition of what constitutes efficient education” and that this must be determined “in accordance with the requirements of the *School Act* as they operate in a practical setting” (i.e. on a case-by-base basis). It also asserted that “[i]t may also be that at some stage certain requirements [...] may have to give way to the liberty of the individual to educate his children as he pleases to the extent that such liberty is protected by the *Charter*. That, we saw, is a question of balancing.” The SCC advised that if school authorities’ actions in this regard were to be unfair or arbitrary, the courts could intervene.

To date, the courts have not provided additional direction or articulated precise rules as to how far the provincial government can go in imposing conditions on the way independent schools provide instruction. However, societal attitudes, collective understandings of, and statutory obligations around, human and children’s rights have evolved since the Supreme Court’s 1986 decision and have application within independent schools.

Canada ratified the UNCRC in 1991 – five years after the SCC decision – thereby becoming legally bound to the provisions within. This includes recognizing children and youth as individual rights holders, making their best interests a primary consideration in all matters concerning them and affording those who are capable the opportunity to participate in decisions impacting them.

The freedom of religion and conscience is still fiercely, and rightly, protected. **Articles 14 and 30** of the UNCRC guarantee children the right to “freedom of thought, conscience, and religion,” as well as the ability “in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.” **Article 14** acknowledges that the government must “respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.” Provincially, section 4 of *The Saskatchewan Human Rights Code, 2018* continues to protect the rights of all people to freedom of conscience and religion.

With respect to independent education, UNCRC **Article 29** further affirms the right for individuals or groups to establish their own forms of education. As indicated above, section 13(2) *The Saskatchewan Human Rights Code, 2018* goes further in affirming the right of religious organizations to employ a restrictive enrolment policy on the grounds of creed and religion. The ability of religiously-based independent schools to limit enrolment to those who share the same faith is further confirmed by section 36 of *The Registered Independent Schools Regulations*.

³² R. v. Jones, 1986 CanLII 32 (SCC), [1986] 2 SCR 284 (Retrieved from: <https://canlii.ca/t/1ftqk>)

³³ R. v. Jones, 1986 CanLII 32 (SCC), [1986] 2 SCR 284, p. 298 (Retrieved from: <https://canlii.ca/t/1ftqk>)

However, with the evolution of human rights law, we now have a better and more nuanced understanding of how the right to religion can be respected within independent education while respecting all other rights of children and youth at the same time.

For instance, apart from permitting restrictive enrolment, *The Saskatchewan Human Rights Code, 2018* still prohibits other discrimination on the basis of all other prohibited grounds (section 13). Of critical importance to elements at issue, the Code includes sexual orientation and gender identity as prohibited grounds of discrimination. **Article 14.3** of the UNCRC qualifies the “freedom to manifest one’s religion or beliefs” as being subject to “such limitations as are prescribed by law and are necessary to protect [...] the fundamental rights and freedoms of others.”

“Independent schools clearly have the right to exist in a Western liberal democracy such as Canada, and parents have the right to provide for the education of their children in accordance with their religious convictions by enrolling them in independent schools. On the other hand, the government has a compelling interest and responsibility to put in place a legislative and regulatory framework for the operation of independent schools in Saskatchewan in order to protect the interests of the public at large and the children enrolled in independent schools, themselves.”

– Minister’s Advisory Board on Independent Schools.
(1990). *Final Report to the Minister of Education*.
Saskatoon, SK: Author. pp. 179-80

Additionally, despite the lack of legal precedent specific to the appropriate extent of government’s reach within independent schools, there is more recent case law on adjacent legal questions supporting the prioritization of the best interests of children over implications on the freedom of religion, where these two concepts may conflict.^{34,35}

Further, in setting out the aims of education, UNCRC **Article 29** provides additional guidance on what constitutes efficient (or quality) education than what was available at the time of the 1986 Supreme Court decision in *R v. Jones*. This includes ensuring that education, including within private/independent schools, respects all the rights of the child under the UNCRC and any minimum standards laid down by the State. It is the opinion of the Advocate that these minimum standards include both those related to expectations for instruction, and the prohibited grounds of discrimination within provincial human rights legislation.

The Committee on the Rights of the Child further elaborates on the implementation of **Article 29** in its *General Comment No. 1 (2001) Article 29(1): The Aims of Education*.³⁶ It states that the content of a child’s education must be “firmly rooted in the values of **article 29(1)**”, while recognizing the need for a “balanced approach to education [...] which succeeds in reconciling diverse values through dialogue and respect for difference.” It states that discrimination of any kind within education, such as on the basis of gender or disability, is in direct contradiction to **Article 29(1)(a)** and undermines the capacity of children to benefit from educational opportunities.³⁷

UNCRC Article 29

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Notably, neither *The Education Act, 1995*, nor *The Registered Independent Schools Regulations* make specific reference to the prohibition of other forms of discrimination on the basis of prohibited grounds. The potential implications of this will be discussed further in later sections of this report.

³⁴ P. (D.) v. S. (C.), 1993 CanLII 35 (SCC), [1993] 4 SCR 141 (Retrieved from: <https://canlii.ca/t/1frwx>)

³⁵ Hall (Litigation guardian of) v. Powers, 2002 CanLII 49475 (ON SC) (Retrieved from: <https://canlii.ca/t/1w3mh>)

³⁶ The Committee on the Rights of the Child is a body of independent experts that monitors the implementation of the UNCRC and its Optional Protocols. Members of the Committee are elected by State parties (i.e. national governments). General Comments of the Committee aid governments on the interpretation and application of the UNCRC.

³⁷ Committee on the Rights of the Child. (2001). *General Comment No. 1 (2001) Article 29(1): The Aims of Education*. Geneva, CH: United Nations CRC/GC/2001/1

6.4 THE LEGAL OBLIGATION FOR OVERSIGHT

A significant part of childhood is spent at school and the school age years are critical to a young person's development. While in a school, administrators and staff of the school are responsible, not only for the education of the child, but also for their care and protection.

Even as private organizations, independent schools are required to respect the full spectrum of children's rights under the UNCRC and *The Saskatchewan Human Rights Code, 2018* – and the Government of Saskatchewan is obligated to ensure that these schools do so.

Article 3 of the UNCRC spells out the obligations of both the independent school and the government in this regard, directing that:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

As referenced earlier, the right to opt out of state education is important to allow for diversity and flexibility in our society. The UNCRC **Article 3(2)** acknowledges that, when acting in the best interests of children, governments are to take into account "the rights and duties of parents and others legally responsible for the child." However, "[c]hildren do not lose their human rights by virtue of passing through the school gates."³⁸ **Article 29(2)** places two conditions on independent schools which are "essential fetters" on independent school freedoms in this regard:

- that private education should conform to the aims of education as set out in article 29(1); and,
- that it should conform to any minimum mandatory standards as laid down by the State.³⁹

Parental choice is to be respected within our education system. However, there is an underlying obligation on the "the State [to] provide a 'safety net' ensuring the child's well-being in all circumstances."⁴⁰ This includes ensuring the private education that parents have chosen for their children respects *all* rights of the child, including the:

- fulfilment of the aims of education as laid out in **Article 29(1)**;
- provision of a quality education;
- guarantee of non-discrimination; and,
- recognition of the participation rights of children and youth.

The Committee on the Rights of the Child has been very clear that – while it supports the non-governmental sector’s role in program implementation – the government has an obligation to ensure that private service providers (including “for profit” and “non-profit”) respect the principles and provisions of the Convention, stating:

The role of civil society should be complementary to - not a substitute for - the role of the State. Where non-State services play a major role, the Committee reminds States parties that they have an obligation to monitor and regulate the quality of provision to ensure that children’s rights are protected, and their best interests served.⁴¹

The child rights framework further directs that “[i]mplementation of article 3(3) requires a comprehensive review of the legislative framework applying to all such institutions and services, whether run directly by the State, or by voluntary and private bodies. The review needs to cover all services – care, including foster care and day care, health, education, penal institutions and so on. Consistent standards should be applied to all, with adequate independent inspection and monitoring.”⁴²

The above is true whether or not an independent school receives public funding. No system, inclusive of an independent school, is immune from scrutiny or oversight when it comes to ensuring a quality education or the safety and protection of children and/or their rights.

The Government did engage in a comprehensive review in 1990 with the work of the Minister’s Advisory Board on Independent Education, whose final report made recommendations for the regulation of independent schools. Since that time - and in particular since the province began funding Qualified Independent Schools - oversight was enhanced through defining and operationalizing inspection and supervision processes, and setting out required qualifications for supervisory officials. However, the overall foundation on which the regulatory framework is based has remained largely consistent to the principles put forward in 1990.

The findings of our investigation indicate that, considering the significant shift in societal values recognized by the legal and rights framework since 1990, it was time for the Government of Saskatchewan, via the Ministry of Education, to review the manner in which it provides oversight to these schools. As indicated earlier, the Ministry has done significant work in this regard during the course of our investigation, although our findings indicate that there is still opportunity for further improvement.

³⁸ United Nations Committee on the Rights of the Child. (2001). *General Comment No. 1 (2001) Article 29(1): The Aims of Education*. CH: United Nations. CRC/GC/2001/1. para. 8

³⁹ United Nations Children’s Fund. (2007). *Implementation Handbook for the Convention on the Rights of the Child*. Geneva, CH: United Nations. p. 451CH: United Nations. CRC/GC/2001/1. para. 8

⁴⁰ United Nations Children’s Fund. (2007). *Implementation Handbook for the Convention on the Rights of the Child*. CH: United Nations. p. 40

⁴¹ Committee on the Rights of the Child. (2006). *General Comment No. 7 (2005) Implementing child rights in early childhood*. Geneva, CH: United Nations CRC/C/GC/7. para. 32

⁴² United Nations Children’s Fund. (2007). *Implementation Handbook for the Convention on the Rights of the Child*. Geneva, CH: United Nations. p. 41

⁴³ Minister’s Advisory Board on Independent Schools. (1990). *Final Report to the Minister of Education Volumes I and II*. Regina, SK: Author.

7.0

Issues Examined by the Advocate

The circumstances that led to the Advocate's systemic review prompted our office to look into the Ministry's oversight of all registered independent schools. The numerous changes and improvements implemented by the Ministry of Education to its regulations and procedures during the course of our investigation have mitigated the need for some recommendations that would, otherwise, have been made by the Advocate.

Nonetheless, in the spirit of transparency and accountability, our findings on these matters will still be discussed here to align with our goal of offering an independent lens to the overall operation of independent schools in Saskatchewan.

The findings rendered from the issues reviewed in this investigation arise from an overall examination of oversight by the Ministry of Education and not from an in-depth inquiry into the individual operation of every independent school. Findings related to potential breakdowns in the implementation of the rights of children and youth are not intended to suggest that this is the case in every school. Rather, these are included to demonstrate the historical gaps in oversight processes applied by the Ministry of Education that have allowed these breakdowns to occur in some cases, and to provide rationale for any recommendations resulting from our findings.

7.1 LOCAL ADMINISTRATIVE POLICIES AND PROCEDURES

Prior to launching our investigation, registered independent schools – including those receiving provincial funding – were not required to develop formal administrative policies and procedures, outside of attendance policies.⁴⁴ The development of any other policy statements was voluntary, although The Registered Independent Schools Policy and Procedures Manual “encourage[d]” each school to do so and provided several broad suggestions as to what could be included.⁴⁵

The Ministry advised the Advocate that the development of policies and procedures was voluntary due to the small size and capacity of many independent schools. The Advocate notes, however, that some Qualified Independent Schools enrolled as many as 100 to over 260 students in 2022-23, with an online independent school surpassing a student population of 500. One of the Historical High Schools had nearly 400 students in the 2022-23 school year.⁴⁶

Nonetheless, despite not being mandatory, most independent schools had developed policies in at least some areas, with some developing student/parent handbooks that are quite comprehensive. However, because of their voluntary nature, the Ministry did not previously have a practice of collecting or reviewing these documents. The Annual Inspection Form included prompts for Ministry officials to indicate whether an administrative manual, a student/parent handbook or policies related to admission, lockdown and natural disaster procedures were completed and available. However, Ministry officials responsible for inspecting these schools advised our office that past practice often relied upon verbal statements from school administrators that these were in place rather than physically reviewing them.

It was not until August 2022, when the allegations of former LCA students were made public that the Ministry requested all registered independent schools to provide copies of their policies and/or student handbooks.

Since this time, *The Registered Independent Schools Regulations* have now been amended to require every independent school to “establish or adopt policies and procedures pertaining to the internal organization, management and supervision of the registered independent school” and to provide a copy of these documents to the Minister. Ministry policy and template inspection forms have also been amended to reflect these requirements. The amended Regulations also give the Minister the ability to direct an independent school to update a policy or to follow policies and procedures of the Ministry. To facilitate these requirements, the Ministry has developed model administrative policies and procedures to be utilized by registered independent schools. Some are mandatory and some are optional. These procedures may be adapted by individual schools to meet their unique needs, but only with the approval of the Minister. These procedures are to be put in place by registered independent schools no later than September 1, 2024 (i.e. the academic year following the release of this report). The Registered Independent Schools Policies and Procedures Manual has been amended accordingly to reflect these requirements.⁴⁷

Due to the amendments to regulation and policy, the Advocate is not making a formal recommendation on this issue. However, our office will be monitoring the implementation of these new procedures through our regular advocacy process. Certain model Administrative Procedures relevant to other issues reviewed in the course of our investigation will be discussed in more detail in the applicable sections of this report.

⁴⁴ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 2.5 – Student Attendance – The only required policy required prior to recent amendments was in regard to attendance, as students must be able to verify, they are eligible for exemption from attendance at an educational program run by a board of education, the Conseil scolaire fransaskois or the Ministry of Education under section 157 of *The Education Act, 1995*.

⁴⁵ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 2.6 – General School Policies for Registered Independent Schools. p. 33

⁴⁶ Enrolment data provided by the Saskatchewan Ministry of Education.

⁴⁷ The Registered Independent Schools Policy and Procedures Manual. (2023). Section 2.6 – Administrative Policies and Procedures for Registered Independent Schools

7.2 CAPACITY OF THE INDEPENDENT SCHOOLS AND HOME-BASED EDUCATION UNIT

For the majority of time since the Ministry of Education became responsible for the funding and supervision of Qualified Independent Schools, the Independent Schools, and Home-based Education Unit (ISHBE Unit) was comprised of an Executive Director of Programs, a Program Manager, one Superintendent of Programs and an Administrative Assistant (shared with another unit of the Programs Branch). Staffing of this unit has since been increased, as will be discussed further below.

In addition to the overall management of independent schools and home-based education, the Executive Director of Programs position is also responsible for oversight of Heritage Language Schools and the Official Languages Program, chairing the Teachers Classification Board, and acting as the planning officer and/or liaison for the Ministry of Education with respect to trauma response and emergency planning.

The Program Manager acts as the first point of contact for independent schools and home-based educators, develops costing models, provides budgetary information and projections to the Ministry, and ensures compliance of independent schools with regulatory requirements and standards by reviewing submissions such as Annual Returns, academic calendars, and financial statements.

Superintendents of Programs are tasked with assessing applications for, and the inspection of, registered independent schools (apart from Historical High Schools and Associate Schools), supervision of Qualified Independent Schools, Certified Independent Schools and teachers in any unfunded schools that provide secondary level credit courses.⁴⁸ They are also responsible for the planning and administration of Ministry initiatives, programs, and services associated within independent schools. Superintendents of Programs are required to meet the qualifications of a Director of Education within the provincial system, including the completion of a Master of Education degree, a Professional A Certificate and a minimum of two years of school administration experience.⁴⁹

The Advocate was advised that inspection visits of unfunded registered independent schools and Alternative schools typically take approximately one to two hours, while inspections of Qualified Independent Schools could be combined with supervision visits. Depending on the size of a Qualified Independent School, supervision visits could take a few hours to a day and a half.

From 2014 to March 2022, there were 19 to 21 Qualified Independent Schools that each required three visits per year. Additionally, there were approximately 23 unfunded Registered Independent Schools and 8 Alternative Schools that each required one annual inspection visit. This is a total – give or take – of 52 schools, with a combined 94 required

visits each year between September and June. During this time, there was only one Superintendent of Programs responsible for these 94 visits, with occasional assistance from the Executive Director. The Advocate was advised that the workload was too much for one person.

In comparison, the Advocate notes that one public school division in the province operated 63 schools in 2022-23. This division had a complement of six Superintendents, each responsible for 9 to 11 schools. Although their roles differ slightly from Superintendents of Programs responsible for independent schools, Superintendents in this division also have a minimum requirement of three official visits to each school per year. This is a total of 27 to 33 required school visits per year – as compared to 94. Moreover, a school division official reported that even this complement of staff was not enough and, due to funding restraints, the division was facing capacity issues.

For reasons discussed in later sections of this report, our investigation concluded that the previous ISHBE staffing complement was insufficient to provide adequate oversight and to fully discharge the Ministry's duty to ensure all categories of independent schools were compliant with regulatory and policy requirements.

A second Superintendent of Programs position was created and filled in March 2022, prior to the recent allegations raised. In the 2022-23 academic year, there were 19 Qualified Independent Schools, 8 Alternative Schools and 22 unfunded Registered Independent Schools requiring a collective total of 87 in-person visits.

Further, during the course of our investigation, the Ministry created a third full-time Superintendent of Programs position. This third position was established, in part, to facilitate the enhanced supervision of Qualified Independent Schools that was put in place in response to the allegations raised in the summer of 2022. In addition, the Ministry created an Executive Coordinator position to provide administrative support directly to the Programs Branch to ensure, in part, the proper filing of documentation related to registered independent schools.

As the Ministry has since addressed the ISHBE Unit's capacity to provide quality inspection, the Advocate is not making a recommendation in this regard, however, will be monitoring the impacts of these developments through our regular operations.

⁴⁸ As described in Section 5.2 "Current Operational Landscape", oversight of Historical High Schools and Alternative Schools is delegated to "locally approved supervisors". Alternative Schools are inspected annually by the ISHBE Unit of the Ministry, whereas Historical High Schools are not. Oversight of Associate Schools is the sole responsibility of the school division with which it has an operating agreement.

⁴⁹ The Registered Independent Schools Regulations (subsection 21(2))

7.3 PROCESSES OF INSPECTION AND SUPERVISION

Processes of inspection and supervision constitute the Ministry of Education's primary oversight mechanisms regarding independent schools. Subsequent to the allegations being raised, the Ministry reviewed these processes and made amendments to both. The Advocate acknowledges these positive developments, however, notes further opportunities to strengthen Ministry oversight in this regard.

7.3.1 Inspection

Annual inspections are typically conducted in either May or June. Inspection visits are scheduled with the school and have been described as "a confirmation visit" to ensure compliance with the Regulations, as well as the accuracy of information provided on the Annual Return (ex. hours of instructions, school calendar, attendance, and instruction in the required areas of study).

Annual inspections have typically been the only time Ministry of Education staff were physically present in unfunded Registered Independent Schools and Alternative Schools unless the school had requested supervision or other assistance, or offered secondary level credits. In the case of Qualified Independent Schools (and now Certified Independent Schools), inspections are usually, although not always, combined with the third supervision visit to the school.⁵⁰

Prior to recent additions to the following section, *The Registered Independent Schools Regulations* indicated that:

23(3) Inspection of a registered independent school by the ministry:

(a) includes:

- (i) examining and inspecting the financial condition or the administrative condition of the school or any other matter relating to the management, administration or operation of the school;
- (ii) checking compliance with the Act, these regulations and the criteria for registration on an ongoing and collaborative basis with the school;
- (iii) observing any aspect of the educational activities and educational operations in the school to protect the societal interest of educating the pupils in the school; and
- (iv) an appreciation and recognition of the distinct philosophical orientation of each registered independent school; and

(b) may include non-directive and unobtrusive supervision of the educational operations of the school.

(4) Inspection of a registered independent school by the ministry does not include inspection of the school's responsibility for:

- (a) the recruitment and dismissal of independent schoolteachers; or**
- (b) the selection of the school's programs and courses.**

Inspections did not occur in 2019-20 or 2020-21 due to the COVID-19 pandemic. Our office reviewed inspection documentation for a sample of independent schools across all applicable categories in the previous five years and found that inspections were otherwise occurring as required. However, we did note some elements of the process in which the quality of oversight could be improved.

At the outset of the Advocate's consideration of this issue, we saw discrepancies between the forms used prior to the 2022-23 school year in the inspection of unfunded Registered Independent Schools/Alternative Schools and Qualified Independent Schools. The Ministry's template for inspection of unfunded/Alternative schools was noted to be more robust than that used for schools receiving funding.

Some of these discrepancies are understandably related to the fact that annual inspections are the only time during a year that Ministry staff are physically present in an unfunded or Alternative School, compared to the multiple visits expected to take place in Qualified Independent Schools. For instance, the Ministry's template for inspection of unfunded and Alternative Schools included check boxes related to assessment of instruction. These items are not required to be assessed during inspection of a Qualified Independent School, as these elements are evaluated during the multiple teacher supervision visits occurring throughout the year.

However, some elements that the Ministry ought to have been monitoring in Qualified Independent Schools as per Regulation were missing from the inspection forms used for this category, such as a reference to the societal interests, or the social, intellectual, emotional, and physical well-being of children. Other examples include the appropriate maintenance of pupil records, confirmation that discipline policies were consistent with the law, and participation in emergency safety drills. Ministry officials advised our office that conversations took place regarding these matters. Nonetheless, key information was not being systematically collected for the record.

Other evidence suggested that actual inspection processes may not have met all expectations of Ministry leadership in this regard. For instance, a Ministry official advised that one of the duties of a supervisory official during an inspection was to confirm the existence and proper storage of student records, including cumulative files. Yet, it was reported to the Advocate that cumulative files were not reviewed during either inspection or supervision visits. In fact, when an official trustee was appointed to one Qualified Independent School, the trustee found cumulative records were not properly stored and had to implement immediate changes to ensure the confidentiality of students and, therefore, their right to privacy.

⁵⁰ The Ministry does not inspect Associate Schools, as all oversight is provided by the school division, or Historical High Schools, whose oversight is conducted by locally approved supervisors.

The Advocate also found that after the Ministry began to take a closer look at the operations of Qualified Independent Schools, it learned that at least one school had a current practice of taking students out of class to assist with church activities. Qualified Independent Schools are obligated to follow provincial requirements with respect to hours of instruction as per *The Education Act, 1995*. If children are excused from class for purposes unrelated to curriculum, their academic education is interrupted and their right to a comparable education is compromised. In November 2022, the Ministry directed this school to cease this practice immediately and to document the curriculum outcomes achieved through any future involvement with the church. Although it is positive that the matter has now been addressed, the Advocate notes with concern that it was neither identified nor resolved through the Ministry's inspection and supervision processes in the preceding years for which our office reviewed documentation.

The Advocate notes similar historical circumstances in which students in another independent school were pulled out of school to assist with political campaigns.⁵¹ That instance occurred prior to the school receiving public funding and related oversight by the Ministry of Education. Nonetheless, as there is evidence that students were removed from class to participate in non-school related activities in at least one Qualified Independent School as recently as November 2022, it raises questions as to whether similar interruptions to education have been or could be occurring in other schools.

These examples are indicative of gaps in the Ministry's previous processes and its corresponding ability to ensure the rights of children were being adequately protected.

To rectify these gaps, the Ministry reviewed and updated its Policy Manual and inspection forms, largely addressing the disparities identified here.

The Ministry also made several changes to the Policy Manual to strengthen its ability to attend any independent school at any time without prior approval or consultation with school administrators. Previously, particularly in unfunded independent schools, all inspection visits were pre-planned.

Additionally, further to recent amendments to subsection 23(3) of the Regulations, the following responsibilities have been added to the inspection process:

- (v) reviewing the school's application of and adherence to *The Registered Independent Schools Policy and Procedure Manual* published by the ministry, as amended from time to time;
- (vi) reviewing pupil and teacher records;
- (vii) meeting with pupils, parents, guardians, teachers, school administrators, the director, the principal and any other staff of the school; and
- (viii) meeting with the board of the registered independent school.

⁵¹ Anton, J. (8 August 2022). Former Sask. private school students allege being 'coerced' into working on political campaigns. *CBC News*. (Retrieved from: <https://www.cbc.ca/news/canada/saskatchewan/former-sask-private-school-students-allege-being-coerced-into-working-on-political-campaigns-1.6544384>)

The Regulations have now also been amended to allow the Ministry to supervise any registered independent school, including those that are unfunded, at its discretion. The Ministry's updated Policy Manual further broadened the scope of the recommendations it can make to Qualified (and now Certified) Independent Schools upon inspection by including an overarching ability to make recommendations related to, "any other matter pertaining to the operation or function of the [school]."

As a result of positive developments to regulation, policy and practice, the only outstanding matters identified in our review include the lack of a standardized process to ensure students are not removed from class for purposes unrelated to curriculum, and the continued absence of a prompt on the Qualified Independent School Annual Inspection form to assess the social, intellectual, emotional, and physical well-being of children. The latter issue is addressed further in Section 7.6.1.1 of this report related to the "Physical and Social Environment." The province of British Columbia utilizes a robust inspection tool. While inspections in that jurisdiction may be less frequent, its forms could be looked to as an example should the Ministry wish to further enhance its operational tools in this regard.

RECOMMENDATION #1

The Ministry of Education develop and implement a standardized process to ensure students in all registered independent schools required to adhere to provincial curriculum are not removed from class for purposes unrelated to achieving curriculum objectives.

7.3.2 Supervision

As indicated previously, unfunded Registered Independent Schools are generally not supervised by the Ministry. Prior to recent amendments to the Regulations, this would only occur if the school requested supervision, offered secondary level credits, or a teacher was seeking accreditation. Per *The Registered Independent Schools Regulations*, Alternative Schools and Historical High Schools have the option to be supervised by the Ministry, but are typically supervised by locally approved supervisors. Associate Schools are supervised by school divisions. The Ministry's Independent and Home-based Education Unit supervises Qualified (and now Certified) Independent Schools.

For the purposes of this report, our investigation primarily focused on the supervision processes used within Qualified (and now Certified) Independent Schools.

We note, however, that as per amendments to Regulation and policy, the Ministry can now supervise any category of independent school – including those that are unfunded – at its discretion. The advantages of this development will be addressed in other sections of this report.

Additionally, we noted that in at least one Historical High School the locally approved supervisor was also the director of the school until late 2022. Acknowledging that provincial school divisions have directors of education that are responsible for oversight of schools in their division, as will also be referenced later, these individuals are further removed from the operation of individual provincial schools than are the directors of many independent schools. One person fulfilling the dual role of director and locally approved supervisor could impact the actual or perceived impartiality, and therefore efficacy, of supervision.

The Ministry addressed this issue in its amendments to the Policy Manual in October 2023, by adding that it “**may refuse** to approve a local arrangement for supervision by a person who: [...] is currently employed by the school in another role; or, is a member of the school board [emphasis added].”⁵² While the wording of the policy does not explicitly prohibit these circumstances, a Ministry official indicated to our office that this practice would no longer occur. Nevertheless, to reduce any actual or perceived conflict of interest, the Advocate asserts that the Manual should be strengthened to explicitly prohibit a locally approved supervisor from holding any other role with an independent school.

RECOMMENDATION #2

The Ministry of Education amend The Registered Independent Schools Policy and Procedures Manual to explicitly prohibit a locally approved supervisor from holding any other role with an independent school.

Supervision of Qualified (and now Certified) Independent Schools

The Registered Independent Schools Policy and Procedure Manual describes supervision as “an ongoing and collaborative process aimed at the improvement of instruction in a school, that includes both evaluating and enhancing the performance of teachers, leading to teacher professional growth, improved instruction, improved learner outcomes and student well-being.”⁵³

Prior to recent amendments, the Policy Manual further indicated that, “In registered independent schools, supervision is somewhat narrower than the present concept of school supervision in Saskatchewan’s public/separate schools and les écoles franciskoises, in that it does not involve responsibility for the recruitment **and dismissal** of teachers or the selection of programs and courses in the registered independent school [emphasis added].”⁵⁴

However, our office notes that one of the recent amendments made to *The Registered Independent Schools Regulations* was to give the Ministry authority to dismiss teachers in independent schools under its supervision. This amendment does not extend the Ministry’s authority to the dismissal of directors, coaches, counsellors, or anyone not in the position of “independent schoolteachers.”

Provincial policy requires that Qualified (and now Certified) Independent Schools “be supervised a minimum of three times during the school year. The first supervision will be scheduled while all subsequent visits may not be.”⁵⁵ The practice of Ministry Superintendents of Programs (supervisory officials/Ministry staff) has been to conduct an initial visit at each Qualified Independent School at the beginning of the school year. However, this step is not required by policy, and staff have not kept records of these visits other than noting the date of the visit. Due to the frequent turnover in teaching staff, the purpose of these visits was described as being to get to know school administrators, explain the supervision process, and allow them to ask any questions. Ministry staff did not count these initial visits as one of their three required supervision visits to schools.

Ministry staff endeavor to observe or meet with all Professional A teachers during each of their supervision visits to Qualified Independent Schools and now, Certified Independent Schools. However, they report this is not always possible if a teacher is not in attendance at the time of their visit. The nature of the supervision conducted is dependent on the length of time a teacher has been employed in a particular school. The criteria require Ministry staff to observe classes taught by first- and second-year teachers three times per year. Teachers who have been employed at the same school for three years or more would have two formal supervisions, with a third visit consisting of a discussion with the supervisory official about their participation in a professional development opportunity such as a book review, self-reflection exercise, conference attendance, or peer observation.⁵⁶ Although Ministry staff attempted to make their second supervision visit of the year unscheduled, they reported typically contacting the director or principal in advance to ensure staff and students would be present.

Ministry staff indicated their practice was to observe each Professional A teacher for the length of an entire class. Depending on the number of Professional A teachers in a school, a supervision visit could take one hour to a day and a half.

Frequency of Supervision

The Advocate reviewed supervision documentation from a sample of Qualified Independent Schools for the 2018-19 to 2021-22 academic years, and further back in some cases. Our office also reviewed informal tracking documentation kept by the Ministry of Education and compared it against the supervision forms made available to our office.

The Ministry advised there was limited supervision in 2019-20 and 2020-21 due to the COVID-19 pandemic.

In both the 2018-19 and 2021-22 academic years (i.e. on either side of the pandemic), all schools reviewed had at least two documented supervision visits, while some had the required three. Although documentation confirming a third supervision visit was not provided

⁵² The Registered Independent Schools Policy and Procedures Manual. (2023). Section 5.8 – Historical High Schools Local Supervision Arrangements. p. 97

⁵³ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 5.3 - Supervision of Registered Independent Schools. p. 67

⁵⁴ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 5.3 - Supervision of Registered Independent Schools. p. 67

⁵⁵ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 5.3 - Supervision of Registered Independent Schools. p. 70

⁵⁶ Saskatchewan Ministry of Education. (2018). *Qualified Independent Schools: Supporting Professional Learning*. Regina, SK: Government of Saskatchewan.

to the Advocate in several cases, the Ministry's informal tracking document indicated that a third supervision visit was conducted in all but one instance. The Ministry also states that each school reviewed by our office had an initial visit with Ministry staff at the beginning of both these years.

In the 2019-20 school year, all schools reviewed by our office had at least two documented supervision visits. As the third supervision visit (and combined inspection) typically occurs in May or June, a third visit was not possible due to school closures in March 2020. However, the Ministry indicated that staff did conduct initial visits that year, meaning that Ministry staff were physically present in each school at least three times.

In the 2020-21 school year, in each school reviewed, the Ministry states that staff conducted an initial visit and documentation confirmed one supervision visit during the year.

The pandemic disrupted operations in many areas. Schools, in particular, continued to be cautious about external visitors into 2021 for the safety of the children they served. Accordingly, the Advocate understands the lapse in Ministry visits during these two academic years.

With the exception of disruptions resulting from the COVID-19 pandemic, with the occurrence of "initial visits", and two to three confirmed supervision visits (the last of which is typically, but not always, combined with an inspection), Ministry staff are typically physically present in Qualified Independent Schools four to five times per year.

Again, in the 2022-23 school year, the Ministry of Education increased its supervision visits to all Qualified Independent Schools to once per month. While the Ministry indicates this supervision schedule will continue into the foreseen future, at the time of writing it was not clear how long this was expected to be maintained.

Quality of Supervision

The Ministry of Education utilizes a template form titled "Qualified Independent School Supervision of Instruction" to guide its staff during supervision visits. The form includes items to check off once observed as well as room for comments. Items intended to be observed include the classroom's physical and visual environment, whether year-at-a-glance plans are provided, classroom management and instruction, connection of the lesson to Saskatchewan curricula, student engagement/interaction, knowledge and preparation of the teacher, and evidence of student assessment.

The form was revised in late 2022. The updated version of the form required Ministry staff to also describe the learning style observed (i.e. critical thinking, communication, collaboration, and creativity), and to verify evidence of teacher supervision of paraprofessional staff, such as educational assistants.

In our review of supervision documentation completed prior to 2022-23, the Advocate noted that, although there were comments recorded describing what students were working

on during the observation and which curriculum outcomes were addressed, often the check boxes were not utilized. As a result, there was no way to for our office to determine whether other elements were being assessed during visits. A Ministry official explained they were confident staff were speaking with schools about these items, but that compliance with documentation would be improved moving forward.

Several Qualified Independent Schools use a “self-mastery approach” through which students read and complete workbooks on their own and little direct teaching is done. This approach will be discussed in depth in later sections of this report. In these schools, comments documented on supervision forms indicated that students were usually working on workbooks during Ministry visits. Supervisory officials typically recorded the subject students were working on and what curriculum outcomes were being addressed by the workbook. During visits where students did group work, made presentations, or received direct instruction from the teacher, teachers were described as being well-prepared, students were observed as being engaged in the lesson and curriculum outcomes were typically identified.

However, the Advocate notes with concern that several educational experts who have now taken a closer look at some Qualified Independent Schools because of the recent circumstances found gaps in the ability of the resources used to meet curriculum outcomes, the use of outdated materials, instructional approaches that did not foster creativity, critical thinking and collaboration, and teaching roles taken on by non-professional teachers. Yet, our review did not show evidence that these issues were previously identified or addressed through the Ministry’s inspection and supervision processes.

The Advocate acknowledges that the focus of Ministry staff during supervision was on supervising and supporting the development of teachers – not reviewing resources. The limited time available to the one supervisory official primarily responsible for the inspection and supervision of registered independent schools prior to March 2022 did not allow for this type of in-depth review. However, in schools utilizing the self-mastery approach where resources are significantly relied upon and a Professional A teacher may not be the primary contact for students, it is imperative that these resources be regularly reviewed.

Ministry staff tasked with inspection and supervision of independent schools are experts in their field. Any gaps in oversight may have been the result of a lack of human resource capacity and unclear understandings of how far they are constitutionally able to go in providing direction to schools. Accordingly, it is incumbent upon the Ministry

“ We are ensuring they’re all going to be checked off moving forward. [...] We are going to make sure the documentation is a lot tighter. ”

– MINISTRY OFFICIAL

“ It’s a capacity issue. You can’t go in there and think you’re going to be able to monitor all those pieces in three small visits – if you make it to three visits a year. And part of the work they’re doing is to supervise teachers. And so, you go in there, and you’re watching specific lessons for a day, or whatever that looks like. And you’re reporting back on what you see in terms of the instruction and whatnot. And part of that is to look at curriculum and what they’re doing, but that does not give time to go through everything and see what is missing and what isn’t. [...] It’s a capacity issue. ”

– MINISTRY OFFICIAL

to review its oversight processes against the child framework outlined in this report to ensure it is discharging its duty to uphold the rights of all Saskatchewan students.

Additionally, as there were instances where the Ministry indicated that supervision visits had been conducted, but did not provide confirming documentation to the Advocate, this suggests there is room for improvement in documentation processes. We understand this will be a focus of the Ministry going forward.

Again, the Advocate is encouraged by the recent addition of two Superintendents of Programs, and the amendment to the Regulations requiring all core resources used by Certified Independent Schools to be approved by the Ministry and reviewed every five years. Additionally, the Ministry has now included a similar expectation in policy for Qualified Independent Schools. These enhancements will increase the capacity of the Independent Schools and Home-based Education Unit to monitor resources in a more robust way. However, as discussed and recommended in Section 7.6.2.3 of this report on “Materials and Resources Used,” it is the Advocate’s view that these same requirements ought to also be included in legislation for all funded schools expected to adhere to the provincial curriculum.

“The QIS teachers – one of the biggest pieces of constructive criticism we’ve got is they’re supervised more often in qualified independent schools than they are in school divisions. [...] So, we do supervise a lot. We’re in the classrooms a lot. That was done on purpose.”

– MINISTRY
OFFICIAL

The Advocate does acknowledge that the practice of teachers being supervised up to three times per year by individuals at the superintendent level is in excess to practices employed within provincial schools. In the provincial system, supervision is the responsibility of the principal or their designate – with only indirect involvement by the school division.⁵⁷ Superintendents in the provincial system typically meet regularly with principals, rather than teachers, to review school data (such as Grade 3 reading levels), learning plans, programs of study and various initiatives being administered in schools, as well as respond to parent concerns, and offer guidance and support to the principal. They may occasionally co-observe classroom instruction.

Despite this disparity, the Advocate agrees it is important for an increased level of support – at the superintendent level – to be provided to independent schools, due to their increased reliance on non-professional teachers, the consequent lack of accountability to other regulatory entities (i.e. SPTRB and Saskatchewan League of Educational Administrators, Directors & Superintendents), and the more insular nature of their services.

RECOMMENDATION #3

The Independent Schools and Home-based Education Unit improve documentation practices to ensure there is a qualitative record of all discussion and recommendations made to registered independent schools in all categories.

⁵⁷ For instance, in one public school division reviewed for comparison, teachers undergo a formal evaluation process in their first two years that is conducted by the principal and signed off by the division superintendent. If concerns are raised regarding a teacher’s performance after the first two years, a performance improvement plan will be engaged at the division level to support them.

7.4 EXTERNAL ACCOUNTABILITY AND THE PARTICIPATION RIGHTS OF YOUNG PEOPLE

7.4.1 The Right to Be Heard

The participation rights of children and youth under **Article 12** of the United Nations Convention on the Rights of the Child (UNCRC) recognize that all children are rights holders, and all children have the right to have a voice in matters that affect them.

This right to be heard is so fundamental that the Committee on the Rights of the Child has identified **Article 12** as one of the four general principles of the UNCRC to be considered in the interpretation and implementation of all other rights. Other general principles include the rights to respect for the best interests of the child, non-discrimination, and holistic development.⁵⁸

The Committee has acknowledged that the right of the child to be heard within education, in particular, is “fundamental to the realization of the right to education” and has “note[d] with concern continuing authoritarianism, discrimination, disrespect and violence which characterize the reality of many schools and classrooms. Such environments are not conducive to the expression of children’s views and the due weight to be given these views.”⁵⁹

The rights under **Article 12** include the ability of a young person to initiate complaint processes when they feel they have been ill-treated or treated unfairly – and for decision makers to seriously address their complaint and take appropriate action in the best interests of the child where required.⁶⁰

The Committee recommends that “wherever possible, the child must be given the opportunity to be directly heard in any proceedings.”⁶¹ For this right to be meaningful, the Committee has stated that the child must be informed about their right to express their opinion, the environment must not be “intimidating, hostile, insensitive or inappropriate for his or her age,” and that “[p]roceedings must be both accessible and child-appropriate.”⁶²

UNCRC Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

⁵⁸ Committee on the Rights of the Child. (2003). *General Comment No. 5 (2003) General Measures of Implementation of the Convention on the Rights of the Child* (arts. 4, 42 and 44, para. 6). Geneva, CH: United Nations CRC/GC/2003/527

⁵⁹ Committee on the Rights of the Child. (2009). *General Comment No. 12 (2009) The right of the child to be heard*. CRC/C/GC/12. Geneva, CH: United Nations. para. 105

⁶⁰ Committee on the Rights of the Child. (2009). *General Comment No. 12 (2009) The right of the child to be heard*. CRC/C/GC/12 Geneva, CH: United Nations

⁶¹ Committee on the Rights of the Child. (2009). *General Comment No. 12 (2009) The right of the child to be heard*. CRC/C/GC/12 Geneva, CH: United Nations. para. 35

⁶² Committee on the Rights of the Child. (2009). *General Comment No. 12 (2009) The right of the child to be heard*. CRC/C/GC/12 Geneva, CH: United Nations. para. 33-34

“ **Children should have the possibility of addressing an ombudsman or a person of a comparable role in all children’s institutions, inter alia, in schools and day-care centres, in order to voice their complaints. Children should know who these persons are and how to access them. In the case of family conflicts about consideration of children’s views, a child should be able to turn to a person in the youth services of the community.** ”

– Committee on the Rights of the Child. (2009). General Comment no. 12 (2009) *The right of the child to be heard*. para. 46

Accordingly, it is incumbent upon the Ministry of Education – as the vehicle of government – to ensure that the right of the child to be heard is respected within all levels of education.

7.4.2 Statutory & Policy Gaps Regarding the Right to Be Heard

Our review led us to also consider elements of *The Education Act, 1995* as it applies to students in the provincial system, and the implications this has on regulation and policies applicable to independent schooling. Through our office’s day to day advocacy work, we note that the education system generally takes the concerns of students seriously in their daily practice. However, the legislative and policy basis for fully respecting the right of students to participation is outdated.

Section 148 of *The Education Act, 1995* states:

Mediation of conflict involving pupil

148 Where a difference or conflict arises in the relationship of a pupil to the school, the parent or guardian, on behalf of that pupil, is entitled to immediate access to procedures established by the board of education or the conseil scolaire for the purposes of investigation and mediation of any differences or conflicts [emphasis added].

As written, *The Education Act, 1995* recognizes *only* the parents/guardians of a student – and not the student – as being entitled to complaint resolution processes. A common policy titled “Complaints Procedure” utilized by most, if not all, provincial school divisions reproduces this language.

When asked for comment on the rationale behind the Act restricting students’ independent access to complaints mechanisms, the Ministry responded only that, “Section 148 was written in 1995 and remains unchanged since then.”⁶³ On this, it is unclear whether the Ministry was unaware of the reasons for this restriction despite its current impact across the educational system or would not share the rationale for the restriction.

The reason the Committee on the Rights of the Child recommends a young person should be heard from directly wherever possible is that “in many cases [...] there are risks of a conflict of interest between the child and their most obvious representative (parent(s)).”⁶⁴ Within the current legislative and policy framework, students in the provincial system could potentially be blocked from pursuing a concern about their “relationship to [a] school” if their parent is unwilling to assist, or in disagreement with, them in doing so for reasons that may not be in the best interests of the child.

⁶³ Letter from the Deputy Minister of Education to the Advocate (4 May 2023)

⁶⁴ Committee on the Rights of the Child. (2009). *General Comment No. 12 (2009) The right of the child to be heard*. CRC/C/GC/12 Geneva, CH: United Nations. para.36

Legislation that does not recognize the right of a young person – in accordance with their evolving capacity – to access complaint mechanisms on their own behalf does not respect the participation rights of the young person under **Article 12** of the UNCRC. This is especially critical when a young person may experience threats to their safety or well-being that could otherwise be overlooked or ignored.

Complaint processes are not addressed in *The Registered Independent Schools Regulations*. The Ministry's Registered Independent Schools Policy and Procedures Manual does encourage independent schools to develop "procedures for the resolution of differences or conflicts **between the parents or guardians** and the registered independent school [emphasis added]."⁶⁵ This direction continues to limit student access to complaint mechanisms independently from their parent or guardian.

Although policy development was previously voluntary, many independent schools did develop – in some form or another – written statements on their approach to conflict resolution. These statements generally do not afford students the ability to be heard or raise concerns with school officials. The specific content of these statements will be addressed further in the next section of the report.

Again, in an effort not to infringe on the rights of independent schools, the Ministry neither requested nor reviewed independent school policies prior to August 2022.

While silent on complaint resolution, *The Registered Independent Schools Regulations* limit the ability of students to bring complaints forward on their own behalf by specifically denying them independent access to their own records. Subsection 35(4) requires that **a parent or guardian be physically present** for a student to access their own records – unless they are over 18, or are over 16 *and* living independently. These parameters would not apply to the majority of students attending independent schools.

Subsection 35(5) of the Regulations and the Ministry's Registered Independent Schools Policy and Procedures Manual indicate that independent school boards can dictate their own conditions under which access

The Registered Independent Schools Regulations

Pupil records

35(4) Subject to subsection (5), each registered independent school shall grant access to records relating to a pupil to:

- (a) subject to clause (c), the pupil to whom the records relate **and whose parent or guardian is in attendance when access is granted;****
- (b) the pupil's parent or guardian if the pupil to whom the records relate is not living independently of the parent or guardian;**
- (c) the pupil to whom the records relate if the pupil is:**
 - (i) 16 or 17 years of age and living independently of his or her parents or guardian; or**
 - (ii) 18 years of age or older; [emphasis added]**

[...]

35(5) The board of a registered independent school may pass a resolution prescribing the conditions, including the hours and manner of inspection, under which the access mentioned in subsection (4) is to be granted.

⁶⁵ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 2.6 – General School Policies for Registered Independent Schools. p. 34

is granted to student records.⁶⁶ The only specific direction provided by the Manual in this regard relates to access by non-custodial parents in the absence of a court order. It does not speak to access by students.

The inability to access their own school records without their parent or guardian could make it very difficult for a student to raise and substantiate a concern about their treatment by a school if their parent does not support their right to do so.

“ **Section 30 of LAFOIP provides that an individual whose personal information is contained in a record of a local authority has a right to be given access to the record. Thus, with regard to student records, it is the student who has the right to make the request.** ”

– SASKSCHOOLSPRIVACY.COM

This limitation on access to records is not faced by students in the provincial system. Unlike the boards of independent schools, the boards of public and separate school divisions and the Conseil scolaire fransaskois are subject to *The Local Authority Freedom of Information and Protection of Privacy Act* (LAFOIP). Sections 5, 20 and 30 of LAFOIP state that “every person” has a right to access records in the possession or under the control of a local authority (i.e. the school boards).⁶⁷

We further note that students in independent schools do not benefit from the same protections of their privacy as students

in the public and separate systems. Pursuant to section 49 of LAFOIP, public and separate schools and the Conseil scolaire fransaskois cannot share a student’s information with a parent or guardian if it would constitute an “unreasonable invasion” of the student’s privacy. For instance, this would become relevant if students were to seek out mental health or personal counselling from an individual within the school and could be harmed if the content of those discussions was shared with parents or guardians.

Additionally, public and separate schools are to respect the request of the student not to share information with their parent or guardian if the student is of sufficient maturity to understand the situation and the implications of their decision.⁶⁸ Although the general principles of consent also apply to registered independent schools as per common law and the UNCRC, *The Registered Independent Schools Regulations* are not sufficient and are unclear in the obligation to respect the rights of the student in this regard.

One of the mandatory Administrative Procedures now required of independent schools by the Ministry is on Records Management. This Procedure states that all individuals have the rights to access information and for access to information to be restricted in accordance with LAFOIP.⁶⁹ This change is positive. However, the Regulations and policy Manual have not been amended accordingly. Collectively, they still require a parent to be physically present in order for a student to access their records and allow the independent school board to prescribe the “conditions” under which records can be accessed.

⁶⁶ The Registered Independent Schools Policy and Procedures Manual. (2023). Section 2.4 – Student Records. p. 40

⁶⁷ The only exception to this access, under section 20 of LAFOIP, is if the disclosure of information “could threaten the safety or the physical or mental health of an individual.”

⁶⁸ SaskSchoolsPrivacy. (n.d.) *Access by Parents of Students Over or Under 18 Years*. (Retrieved from <https://saskschoolsprivacy.com/central-administration/student-records/use-access-disclosure-of-student-records/access-by-parents-of-students-over-or-under-18-years/>)

The Committee on the Rights of the Child directs that “[t]he child’s right to be heard imposes the obligation on States parties to review or amend their legislation in order to introduce mechanisms providing children with access to appropriate information, adequate support, if necessary, feedback on the weight given to their views, and procedures for complaints, remedies or redress.”⁷⁰ Therefore, access to appropriate information includes “the right to access one’s own files.”⁷¹

It is the Advocate’s view that legislation, regulation, and policy on the ability of students to make complaints on their own behalf and have access to their own records must be updated to reflect government’s obligations under the UNCRC and common law understandings around consent. Students in independent schools ought to, at minimum, have the same abilities and protections as students in the provincial system.

The Advocate encourages the Ministry of Education to consult with the Saskatchewan Information and Privacy Commissioner in this regard.

RECOMMENDATION #4

The Government of Saskatchewan amend *The Registered Independent Schools Regulations* to recognize the right and entitlement of all pupils of sufficient maturity to immediate access to all procedures established by the board of a registered independent school for the purposes of investigation and mediation of any differences or conflicts with the independent school.

RECOMMENDATION #5

The Government of Saskatchewan amend section 35 of *The Registered Independent Schools Regulations* to recognize the right and entitlement of all pupils of sufficient maturity attending, or having previously attended, registered independent schools to independently access their own records.

⁶⁹ Administrative Procedure 185 – Records Management (2023)

⁷⁰ Committee on the Rights of the Child. (2009). *General Comment No. 12 (2009) The right of the child to be heard*. CRC/C/GC/12 Geneva, CH: United Nations. para. 48

⁷¹ Committee on the Rights of the Child. (2009). *General Comment No. 12 (2009) The right of the child to be heard*. CRC/C/GC/12 Geneva, CH: United Nations. para. 38

RECOMMENDATION #6

The Government of Saskatchewan amend section 35 of *The Registered Independent Schools Regulations* to protect the right of all pupils under 18 years of age from disclosures of information that would constitute an unreasonable invasion of the pupil's privacy.

RECOMMENDATION #7

The Ministry of Education amend the Registered Independent Schools Policy and Procedures Manual to reflect changes made to *The Registered Independent Schools Regulations* related to access to records and protection of privacy, as recommended in this report.

RECOMMENDATION #8

The Government of Saskatchewan amend section 148 of *The Education Act, 1995* to recognize the right and entitlement of all pupils of sufficient maturity to immediate access to procedures established by the board of education or the Conseil scolaire fransaskois for the purposes of investigation and mediation of any differences or conflicts with the school.

RECOMMENDATION #9

The Minister of Education issue a directive to all boards of education and the Conseil scolaire fransaskois to amend their complaints procedures to reflect any amendments to section 148 of *The Education Act, 1995*, as recommended in this report.

7.4.3 Addressing Concerns within Independent Schools

The Advocate found that statutory and policy gaps, combined with the lack of school policy review by the Ministry, opened the door for independent schools to potentially dismiss the participation rights of students – and to limit the ability of their families to address concerns outside of the school. As referenced earlier, many independent schools have formalized their approach to conflict resolution in some form or another. In some instances, processes were articulated in parent/student handbooks. In others, statements in this regard were made on admission documentation to be signed by parents and students.

We acknowledge that some independent schools had policies respecting the participation rights of children and youth. However, our examination revealed Codes of Ethics and Parent Commitments used by several Qualified Independent Schools that emphasized the need to protect the integrity and character of the school over the ability of students or families to raise concerns. These documents required individuals to only speak positively about the school and its personnel, and strongly discouraged them from going to external entities with disputes or concerns. We noted that several Associate Schools had similar expectations for students and parents to only speak positively about the school, but also informed them of the ability to escalate any concerns that could not be resolved at the school level to the school division with which these schools have an agreement.

We found historical evidence of a parent being formally chastised by a school administrator for privately questioning the policies of the school. Although this specific example occurred prior to this school receiving funding and supervision from the Ministry, it is raised here as the Code of Ethics and Parent Commitment used in 2021 continued to place the same restrictions on families.

We note that that it is a widely recognized principle of conflict resolution to first attempt to address the matter with the individual involved and only to elevate the issue should this not be possible, or should a satisfactory resolution not be reached. Accordingly, it is an appropriate process for independent schools to ask that any concerns be first addressed with the staff, administrators, and board of the school. This is the approach also taken by schools in the provincial system. However, for students in the independent schools to which these policies apply – as far as the students would have been aware – no mechanism for taking a complaint further was available.

Moreover, because the same individual could fill several roles within an independent school simultaneously – serving as teacher, principal, director, and board member – it could be difficult for anyone to come forward with a concern involving the person in that role.

The official trustee appointed by the Ministry to oversee the Qualified Independent School discussed above noted “concern that the former director acted as the Chairperson of [the School] Board, Principal (in duty if not in title) and the president of the sponsoring non-profit. Conflict of interest was apparent in the hiring of family members [...]. Given one person serving all these roles simultaneously, no fair and impartial dispute mechanism existed for staff, teacher parent or student complaints to be adjudicated.”

In comparison, we note that the Administrative Procedure utilized by public schools regarding conflict resolution sets out a process in which concerns can be escalated to the division superintendent and then to the director of education should a satisfactory resolution not be achieved. These individuals are further removed from the operation of individual provincial schools than are the director and the board members of many independent schools.

In the public and separate systems, superintendents and directors of education are licenced and regulated by the Saskatchewan League of Educational Administrators, Directors & Superintendents (LEADS).⁷² As such, these individuals are subject to the LEADS Professional Code of Conduct and complaints process – providing yet another layer of accountability should a concern not be addressed appropriately.

In Qualified Independent Schools, the principal must be a Professional A teacher and is, therefore, subject to the conduct requirements of the provincial regulatory body, the Saskatchewan Professional Teachers Regulatory Board (SPTRB). However, directors are not required to be registered teachers, nor must they apply for a Letter of Eligibility from the Ministry of Education and, therefore, do not fall under any regulatory body or complaint process.

The Ministry reported that it is for this reason that its Superintendents of Programs responsible for the inspection and supervision of registered independent schools must hold LEADS qualifications. Further, Ministry officials stated that members of the public have always had the ability to reach out to the Ministry with concerns. However, there was no formal process in place prior to our investigation for students in independent schools, or their families, to raise concerns with the Ministry of Education and no process in place to ensure they were aware of this option.

Although Ministry staff interact with students during inspection and supervision visits, opportunities to raise concerns were not invited nor was Ministry contact information provided, and there was no opportunity during these visits for confidential discussion with students.

The Advocate respectfully acknowledges that religions may have their own principles with respect to conflict resolution that do not involve scrutiny by entities outside their faith. However, children and youth are considered a vulnerable group, and it is for these reasons that systems serving children need to need to be publicly accountable and transparent. Child-serving systems or entities cannot be insular or operate in silos without accountability. As the right of a child to be heard is a fundamental value and general principle of the UNCRC, in a balance of rights on this issue the right of the child must be paramount.

The Advocate is encouraged that, in response to our request for information and examination of this matter, the Ministry developed a draft Administrative Procedure 152 entitled “Student and Parent Complaints and Grievances” to be required for implementation in all independent schools. On review of the draft, the Advocate identified opportunities to strengthen the Procedure to better protect the rights and interests of students and families. Rather than wait for the release of our final report to make a formal recommendation in this regard, the Advocate made several suggestions to the Ministry for improvement and is pleased that the Ministry incorporated our feedback into the final document.

Administrative Procedure 152 “Student and Parent Complaints and Grievances” is mandatory for use by all registered independent schools, and states that:

⁷² In accordance with *The League of Educational Administrators, Directors, and Superintendents Act, 1991*.

- any student currently attending or who has attended the schools can make a complaint (i.e. it does not restrict access to students aged 16+ and living independently);
- schools are to address complaints in a timely and appropriate manner and document all efforts to do so;
- students or parents are to first address concerns with school staff, administration, and the Board;
- in instances where the student or parent is not comfortable approaching school personnel, they can contact the Director of Independent Schools at the Ministry of Education;
- concerns of professional misconduct or incompetence on the part of registered teachers should be reported to the SPTRB;
- concerns of criminal activity should be reported to the police; and,
- schools are required to provide a copy of the Procedure in the registration package for all new and returning students, as well as post it in a public, easily accessible location for students and parents.

The Administrative Procedure also contains an Appendix which is to be provided to all new and returning students/families and posted in the school including contact information for the Ministry, the SPTRB, Kids Help Phone, Healthline 811 and the Advocate's office. Inspection forms for Qualified Independent Schools have been amended to prompt Ministry staff to confirm this has been done, but we note this prompt was not included on the amended inspection form for other independent school categories. At the time of writing, forms for use in Certified Independent Schools were still under development. In light of the approach taken both historically and recently by some registered independent schools towards the participation rights of children and youth, the Advocate emphasizes the obligation on government to ensure this information is accessible to all students in independent schools and urges the Ministry to make this a standard element of inspection.

To address the concerns related to conflict of interest and make students and/or parents feel more comfortable raising concerns with the Board related to the principal or a teacher, the Government also amended *The Registered Independent Schools Regulations* in March 2023 to prohibit the principal of either a Qualified or Certified Independent School from being a member of the non-profit corporation that owns and operates the school. In the case of a Certified Independent School, the same person can not fill the dual role of principal and director – although this is still permitted for Qualified Independent Schools.

The Advocate appreciates the openness of the Ministry of Education and its willingness to work with our office to implement, and subsequently strengthen, the "Student and Parents Complaints and Grievances" procedure, thereby better protecting the participation rights of children and youth enrolled in independent schools. For this reason, the Advocate will not be making a formal recommendation on this, however, will be monitoring the implementation of this new Administrative Procedure through our regular advocacy processes.

RECOMMENDATION #10

The Ministry of Education amend the Registered Independent School: Annual Inspection form to include a prompt to confirm Administrative Procedure 152.1 – Contact Information for Students and Parents has been distributed to families at registration and is posted in a public location accessible to students.

7.4.4 Complaint Reporting and Response

On the matter of complaint reporting, the Ministry's Independent Schools and Home-based Education Unit had no formal policy in place to guide its staff on what to do if a concern or complaint was received by their office, who was responsible for doing it, or how it would be documented.

When allegations of historical abuse first came to the Advocate's attention, our office requested that the Ministry advise us of any other concerns it had received or knowledge it had of physical force/corporal punishment being directed against students in all independent schools. Initially, the Ministry advised that it had never received any such complaints. However, the Ministry had, in fact, received at least three concerns related to the use of physical or verbal force towards students involving two different Qualified Independent Schools between 2012 and 2018. According to Ministry officials, these were not initially disclosed to our office either due to being misfiled, not documented in the first place, or the Ministry simply had not reviewed the files of all categories of registered independent schools in response to our request.

The Advocate reviewed the Ministry's response to these three incidents. In one instance, documentation indicates that, although the school did not notify the Ministry of the incident in a timely manner, the school and the Ministry ultimately dealt with the circumstances appropriately. In two subsequent instances where the Ministry became aware of concerns or allegations, there was not appropriate follow-up or documentation by Ministry staff due to a lack of a formal process and confusion between staff and officials around who was responsible for addressing the matter with the school.

The Advocate also asked the Ministry to provide "records of any complaints or concerns the Ministry has received related to the content and/or quality of teaching, resources, or education within all independent schools within the last five school years, and how those concerns were addressed." The Ministry was only able to provide records of concerns received in 2022 – the majority of which were in relation to the recent allegations against Legacy Christian Academy and are issues that are being addressed through the proposed class action lawsuit. Any issues not related to these circumstances are addressed elsewhere in this report. The lack of records prior to 2022 may indicate that no concerns were received prior to that time, or it could suggest that any previous concerns may not have been properly

documented or brought to the attention of senior leadership in the Independent Schools and Home-based Education Unit (ISHBE Unit).

Notably, the Ministry did not provide documentation of how it addressed any concerns received.

The Ministry has made several recent changes that have the potential to address the issues identified here. To ensure independent schools report any possible criminal behaviour to the Ministry in a timely manner, amendments made to *The Registered Independent Schools Regulations* in August 2022 and March 2023 require the director or Board of all registered independent schools to immediately notify the Ministry of any such allegations made against any staff member, volunteer, individual involved in transporting students and any other individual (other than parents) who is invited or allowed to be present at the school “from time to time.” Qualified and Certified Independent Schools have the additional obligation to report such allegations against any person who is employed or retained by the religious order or society connected to the school that may have contact with students. The Ministry advised the Advocate that, should this occur, the school would be instructed to immediately remove the individual from the school environment while appropriate investigations are conducted.

In response to the documentation issue, the Ministry has recently implemented an online reporting system through which to record and keep track of any future concerns raised, actions taken in response and the outcomes achieved.

Regarding its lack of a complaint process, concurrent to our investigation, Ombudsman Saskatchewan also received and served notice to investigate a complaint from a former student regarding the Ministry’s response to abuse allegations. Through that process, the Ministry acknowledged its lack of reporting and investigation guidelines. The Ombudsman recommended the Ministry “create and implement a complaints management policy and procedure based on Ombudsman Saskatchewan Best Practices” and engaged in an early resolution process to assist the Ministry in doing so. The Ombudsman was satisfied that the policy developed by the Ministry will support the fair handling of complaints moving forward.⁷³ The Advocate has reviewed the new complaints policy and is pleased the Ministry was willing to collaborate with the Ombudsman and benefit from their expertise in this matter.

Due to the Ministry’s efforts to establish reporting requirements, implement an online reporting system, and develop an internal complaints process, the Advocate will not be making a formal recommendation, however, will be monitoring the implementation of these procedures through our regular advocacy processes.

⁷³ Ombudsman Saskatchewan. (31 May 2023). Early Resolution Summary. (Retrieved from: <https://ombudsman.sk.ca/app/uploads/2023/06/Ministry-of-Education-Early-Resolution-Summary.pdf>, 6 July 2023)

7.5 SAFETY AND PROTECTION IN EDUCATION

UNCRC Article 19(1)

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

UNCRC Article 28(2)

States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

As indicated at the outset of this report, former students at a Qualified Independent School have come forward with historical allegations of physical abuse as a form of discipline. While the scope of the Advocate's mandate does not extend to adjudication of criminal or civil liability, it is concerned with whether services to young people respect the interests and well-being of children and youth. UNCRC **Articles 19 and 28.2** stipulate that children have the right to be free from all forms of violence and abuse, and that school discipline must reflect this right, as well as the child's human dignity.

Our purpose for reviewing this issue was to determine whether current policies and practices of the Ministry of Education provide sufficient oversight to ensure respect for the rights, interests and well-being of children and youth in independent schools going forward. However, in order to better understand the sufficiency of current policies and practices, we first had to understand the historical context in which they are based.

7.5.1 Legal Context of Corporal Punishment in Saskatchewan Schools

Prior to 2004, under section 43 of the *Criminal Code*, schoolteachers had the same protections as parents to use physical force (i.e. corporal punishment) to "correct" the behaviour of students, however, the level of force could "not exceed what [was] reasonable under the circumstances." Conduct that was abusive or harmful was – and still is – punishable under criminal law. This protection of schoolteachers was reflected in past versions of *The Education Act*, which defined one of the "[g]eneral duties of pupils" as being to "submit to any discipline that would be exercised by a kind, firm and judicious parent", and stated broadly that "[e]very pupil is subject to the general discipline of the school."

This changed on January 30, 2004, when – in response to a constitutional challenge of *Criminal Code* section 43 – the Supreme Court of Canada placed limits on the use of corporal punishment by parents and prohibited its use in schools. The Court ruled that teachers may only "reasonably apply force to remove a child from a classroom or secure compliance with instructions, but not merely as corporal punishment."

The Education Act, 1995 was then amended in 2005 to reflect these new constitutional requirements. While it continues to state that it is a student's duty to "submit to any discipline that would be exercised by a kind, firm and judicious parent" while at school, it also specifies that "discipline must not include the use of any of the following: (a) a strap, cane or other physical object; (b) a hand or foot in a manner meant to punish."

The Advocate notes that these limits were not explicitly included in *The Registered Independent Schools Regulations* until 2018.

7.5.2 Historical Use of Corporal Punishment in Independent Schools

Again, within the scope of this investigation the Advocate is not able to comment on the circumstances of individual former students. However, there is indication that corporal punishment was systematically used against students at Legacy Christian Academy (then Christian Centre Academy) prior to January 30, 2004. This was referred to by the school as "Scriptural Discipline" and took the form of "paddling" wherein a student would receive multiple (typically 3 to 5) "strokes" with a wide, flat wooden paddle across the buttocks for the purposes of "character development." This policy was described in a "Scriptural Discipline Agreement" signed by parents/caregivers at the time of their child's application for admission to the school up until the time of the Supreme Court decision in 2004. Records were found in student files prior to January 30, 2004 detailing frequent use of "scriptural discipline" for indiscretions such as talking, disobedience, pushing, not listening to instructions, self-correcting work improperly and not understanding course material.

As corporal punishment was, unfortunately, permitted in schools at the time these incidents occurred, it is now the role of the legal system to determine whether the circumstances exceeded what was "reasonable" within the applicable legislative context, or whether it crossed the prescribed legal line into conduct that was abusive and harmful. This is outside the purview of the Advocate's office.

Nonetheless, the Advocate emphasizes that the use of corporal punishment today within educational services would constitute a clear violation of the law, and of a child's right to freedom from all forms of harm under **Articles 19 and 28** of the United Nations Convention on the Rights of the Child.

Our office reviewed a random sample of files of students who attended Legacy Christian Academy after January 2004, and found no record of corporal punishment occurring after the Supreme Court's January 2004 ruling prohibiting its use in schools. However, the "Scriptural Discipline Agreement" was still found in one student application form signed in March 2004. Additionally, the report of the official trustee for Legacy Christian Academy reported finding evidence that a school official had "advised" the use of corporal punishment after January 30, 2004. The Ministry stated that a copy

The Advocate emphasizes that the use of corporal punishment today within educational services would constitute a clear violation of the law, and of a child's right to freedom from all forms of harm under Articles 19 and 28 of the United Nations Convention on the Rights of the Child.

of this document was not made and was unable to provide it to our office. In several files reviewed by our office where students had applied for admission in the latter part of 2004, the “Scriptural Discipline Agreement” had been cut out from the application package, with a handwritten note on the remaining portion of the page stating, “*Currently under revision. Will be appended when revision is complete 06-08-04.*” Later versions of the application form did not include a “Scriptural Discipline Agreement.”

Our review did, however, find indication that attitudes and inclinations toward corporal punishment continued to exist in other Qualified Independent Schools for several years post-January 2004. For instance, a 2006 enrolment package of one school continued to include an albeit somewhat more nuanced “Scriptural Discipline Statement”, and a 2009 letter to a concerned parent from an administrator in another school stated, “For your information, I as a teacher have the right to use force as part of a genuine effort to educate the child, as long as the force poses no reasonable risk of harm that is more than transitory and trifling, and is reasonable under the circumstances.”

Our reviews of documentation from Legacy Christian Academy and other schools revealed the use of other forms of discipline after 2004, such as letters of apology and a system of written “merits/demerits” for positive or undesirable behaviour.

7.5.3 Current Discipline Policies and Ministry Oversight

The Advocate compelled evidence to determine whether the Ministry of Education took any proactive steps to inform independent schools of the Supreme Court’s 2004 decision on corporal punishment and, correspondingly, changes to *The Education Act, 1995* and *The Registered Independent Schools Regulations*. The Ministry was not able to locate any formal communication to or documented conversations with independent schools in this regard. However, Ministry personnel advised there was a practice of discussing with “every school every year” that corporal punishment was not to be used, and that schools were sufficiently aware of this requirement.

Ministry policy for registered independent schools in place, at least as of 2019, indicated that if a school *voluntarily chose* to develop a discipline policy, that policy “must be consistent with the laws of Canada and Saskatchewan.”⁷⁴

However, as previously discussed, prior to the allegations raised by former students in 2022, the Ministry did not have a process for systematically collecting or reviewing discipline policies or practices in independent schools. Inspection forms required supervisory officials to inquire whether a discipline policy was in place, but we heard this box was generally checked based on conversations with school administrators rather than an actual review of the policy.

⁷⁴ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 2.6 General School Policies for Registered Independent Schools. p. 34

Prior to launching our investigation, we noted that the check box on the inspection form for non-Qualified Independent Schools required confirmation that the school's discipline policies were "consistent with the laws of Canada and Saskatchewan," but that the form for Qualified Independent Schools only required confirmation that a discipline policy was "available." The Advocate immediately brought this discrepancy to the attention of the Ministry. Our office was advised this was an oversight and this form was later amended to include the same reference to federal and provincial law.

Current and former Ministry staff who have been involved with independent schools for more than a decade reported not having witnessed or received disclosures of systematic corporal punishment outside of the three instances discussed in the previous section titled "Complaint Reporting and Response."

The official trustees appointed to two Qualified Independent Schools in September 2022, reported seeing no evidence of physical punishment in the schools and observing only appropriate disciplinary practices. To date, our office has not received reports of current use of physical punishment in independent schools.

As a result of the allegations raised, the Ministry requested all independent schools to submit their discipline policies for review in August 2022. Those policies received by the Ministry were provided to our office for review. In October 2023, our office was advised the Ministry of Education cancelled the registration of two unfunded schools for failing to comply with its request.

Our review of these policies found most schools had appropriate discipline policies comparable to those found in public and separate schools. Some identified alternate forms of discipline, while others did not include examples of specific action to be taken.

No policies identified the use of physical discipline or corporal punishment. Several schools across categories had specific statements acknowledging that corporal punishment, physical or emotional intimidation would not be used. Others made more general statements that the school would follow all laws of the jurisdiction in which it was located.

Some schools outlined notably vague language around discipline, while several made references to "biblical correction," "scriptural admonishment," and "scriptural discipline." Additionally, documentation from three Qualified Independent Schools reviewed (such as 'pledge sheets', written demerits, verses to be memorized by students, and admission documentation) continued to place significant emphasis on correction, punishment, and submission to authority, consistent with the religious views and values of the schools. The Ministry advised, "all these schools have agreed this does not, and cannot, include corporal punishment."

It must be noted that *The Education Act, 1995* also includes the requirement for students to "observe standards [...] with respect to: [...] obedience" and to "submit to any discipline that would be exercised by a kind, firm and judicious parent."

The Advocate cannot make assumptions on the intentions behind these phrases, however, takes note of the report of one official trustee who raised “concern about the potential psychological harm imposed by the instructional and disciplinary procedures of [one of the] school[s].” Accordingly, the Advocate emphasizes that the Ministry must continue its efforts to ensure all schools are aware of and commit to disciplinary practices that not only comply with the prohibition of corporal punishment, but also respect the dignity of all students.

To this end, further to amendments to the Regulations and The Registered Independent Schools Policy and Procedures Manual, the Ministry now requires all schools to have discipline policies that “follow all relevant laws and regulations of Canada and Saskatchewan in relation to student discipline,”⁷⁵ and to keep records of student discipline.

The Ministry has provided all independent schools with Administrative Procedure 354 titled “Student Discipline”, clearly stating that “Corporal punishment is never permitted”, and that “The school is committed to providing environments that are physically, emotionally, and spiritually safe and positive.”

All schools are required to adopt this procedure into their own Administrative Policy Manuals and can only amend it with Ministry approval. The Ministry has also amended its procedures for supervision of Qualified (and now Certified) Independent schools to encourage supervisory officials to physically review discipline policies and records at least once per year.

In light of the Ministry’s efforts in this regard, the Advocate is not putting forward any recommendations on this matter.

7.5.4 Other Protection Measures

In order for teachers to be registered with the Saskatchewan Professional Teachers Regulatory Board (SPTRB), they require a criminal record check with a vulnerable sector check. The Ministry has also historically required this of all individuals granted a Letter of Eligibility to teach in religiously-based unfunded independent schools, to be submitted to the Ministry at the time of application. In 2019, the Ministry formalized a Criminal Record Check policy requiring all paid staff and volunteers not registered with the SPTRB to have a current criminal record/vulnerable sector check. The policy required schools to keep these records onsite and provide to the Director of the Independent Schools and Home-based Unit or designate “upon request.” For additional clarity, this policy was appended to the updated Registered Independent Schools Policy and Procedures Manual in October 2023. Additionally, the supervision requirements in policy were amended to encourage Ministry staff to inspect criminal record checks at least once per year in Qualified and Certified Independent Schools.

Additionally, as previously discussed, amendments to regulation and policy in 2022 and 2023 require all independent schools to immediately notify the Ministry of any allegations

⁷⁵ The Registered Independent Schools Policy and Procedures Manual. (2023). Section 2.11 – Discipline Policies for Registered Independent Schools. p. 56

of a criminal nature against staff member or volunteer in contact with students. Qualified and Certified Independent Schools have the additional obligation to report such allegations against any person who is employed or retained by the religious order or society connected to the school that may have contact with students.

In light of these measures, the Advocate is not making recommendations in this regard.

7.6 QUALITY OF EDUCATION

The Advocate acknowledges that measuring the quality of education can be difficult. Perspectives vary based on many factors. The question of how the quality of education is best determined is widely debated.⁷⁶

In Saskatchewan, expectations around the nature and content of instruction within registered independent schools differ depending on whether the school receives public funding. However, regardless of category, section 30 of *The Registered Independent Schools Regulations* requires that instruction provided by every registered independent school in the province be “comparable in quality to that of schools administered by a board of education or the conseil scolaire” and be “consistent with generally accepted teaching principles with respect to academic content and teaching methods.”

However, as stated in the Minister’s Advisory Board on Independent Schools’ *Final Report to the Minister of Education* in 1990:

[...] “comparable” clearly does not mean “the same”. It does not mean that independent schools must be mere replicas of public schools. Parents enrol their children in independent schools in order to achieve objectives which may not or can not be satisfied within the public education system.⁷⁷

Whether registered independent schools are providing a comparable level of education to that of provincial schools is a question that has been raised in recent public discourse. As this is an issue that directly relates to the rights of children and youth to a quality education – and to the Advocate’s mandate to become involved in advocacy respecting the interests and well-being of children youth – the Advocate determined it was in the public interest to explore this issue from an independent, child rights lens.

Our approach to this issue was to review the content and quality of information collected by the Ministry of Education, to determine the level of scrutiny applied to it, and to determine whether the Ministry’s processes are sufficient to discharge its duty to ensure the right to a quality education is being respected, protected, and fulfilled in Saskatchewan.

⁷⁶ See: UNESCO. (2011). *Defining and measuring the quality of education*. Paris, FR: Author (Retrieved from: <https://www.iiep.unesco.org/en/defining-and-measuring-quality-education-2875>); Paulson, Dr. J. and Hewson, K. (n.d.) Standardized Testing: Fair or Not? *Light on Teaching 2013-2014 Issue*. Lethbridge, AB: University of Lethbridge Teaching Centre (Retrieved from: <https://www.ulethbridge.ca/sites/default/files/LightOnTeaching2013-20142-low.pdf>)

⁷⁷ Minister’s Advisory Board on Independent Schools. (1990). *Final Report to the Minister of Education*. Saskatoon, SK: Author. p. 46

“ Every child has the right to receive an education of good quality which in turn requires a focus on the quality of the learning environment, of teaching and learning processes and materials, and of learning outputs. ”

– Committee on the Rights of the Child,
General Comment No. 1 (2001) **Article**
29(1): The Aims of Education. para. 22

Acknowledging there are various methods of measurement and indicators applicable to this issue, using the guidance of the Committee on the Rights of the Child’s *General Comment No. 1 (2001) Article 29(1): The Aims of Education*⁷⁸, we reviewed available information on the quality of Ministry oversight related to:

- the learning environment;
- teaching and learning processes and materials; and,
- and learning outputs.

The Advocate chose to review available data for the past five academic years to provide a snapshot of the current landscape of independent schooling in Saskatchewan.

7.6.1 Learning Environment

Physical and Social Environment

The Ministry of Education assesses the quality of the learning environment in independent schools through annual inspections. In the case of Qualified (and now Certified) Independent Schools, these assessments can also be made during teacher supervision visits.

As indicated earlier, annual inspections are generally the only time Ministry staff are physically present in unfunded Registered Independent Schools and Alternative Schools. In the case of Qualified and Certified Independent Schools, annual inspections can be combined with one of their supervision visits throughout the year. Ministry staff report that annual inspections take approximately one to two hours, inclusive of a tour of the school and, typically, a visit with Board members.

The Registered Independent Schools Policy and Procedures Manual states that Ministry inspection “represents the major way in which the state is protecting the interests of society at large with respect to the education of the children enrolled in registered independent schools. Inspection is concerned with the intellectual, emotional, and physical well-being of children in registered independent schools.”⁷⁹

In addition to determining whether the school continues to comply with eligibility requirements under the Regulations, inspection activities of Ministry staff are largely focused on confirming student attendance and assessing the physical integrity and safety of the facilities in which learning is taking place. For instance, inspection forms require Ministry officials to review such as things as the presence of smoke alarms and fire extinguishers, accessible entrances and exists, and the presence of mold or other factors that may create an unhealthy physical environment for children.

The Advocate is satisfied that the Ministry is appropriately assessing the physical safety of school facilities and taking appropriate action if concerns do exist. Ministry staff report having no concerns with current facilities. In instances where health and safety or fire

inspections were not up to date at the time of the inspection, it was noted on the inspection form and the school was requested to forward completed documents to the Ministry as soon as they were available. There is historical evidence of one Qualified Independent School having its registration cancelled by the Ministry, in part, for failing to comply with safety requirements. Additionally, inspection documentation and statements from Ministry staff indicate that they work with schools to develop lockdown and natural disaster procedures if these are not already in place.

With respect to the emotional well-being of children in independent schools, the inspection form used for unfunded and Alternative Schools has check boxes indicating assessment of whether:

- the societal interests of the child are protected (the general conduct of the school is acceptable; the environment is safe and caring and supports the learning process); and
- the intellectual, emotional, and physical well-being of the children is acceptable.

When asked how Ministry staff assess these elements, the Advocate was advised there are no criteria to guide these determinations. Rather, this is done through observation and brief interactions with students. For instance, during inspection visits, Ministry officials may engage students in a math lesson or science experiment, ask them about their classes, read aloud to them or listen to them sing. They observe whether students appeared happy and comfortable talking to their teachers – which by any standards is a subjective assessment.

The Advocate noted that, although there is space for Ministry officials to record general comments regarding an inspection visit, past practice did not include documenting evidence in this regard.

During the course of our investigation, the Annual Inspection form used in unfunded and Alternative Schools was amended to encourage supervising officials to provide qualitative examples for certain elements inspected such as whether communication skills were effectively modelled, or different instructional methods were used. These additions to the form are positive. Notably, however, the amendments did not include improvements to recording observations on the societal interests and well-being of children in these schools.

It was also noted that elements related to protection of the societal interests and emotional well-being of the child are not found on the inspection form used for Qualified Independent Schools. When asked about this difference, Ministry officials surmised it was because Ministry staff only attend unfunded and Alternative Schools once per year, as opposed to the three visits per year paid to Qualified Independent Schools wherein there is more opportunity to observe student well-being. Additionally, as unfunded schools may not

⁷⁸ For reference, as discussed in Section 6 of this report, the aims of education pursuant to UNCRC Article 29 are: (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; (e) The development of respect for the natural environment.

⁷⁹ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 5.1 – Inspection of All Registered Independent Schools. p. 63

have registered teachers bound by the professional standards of the Saskatchewan Professional Teachers Regulatory Board (SPTRB), this prompt served as an additional safeguard for ensuring these assessments took place.

The lack of context provided on inspection forms does not allow for an objective assessment by our office of the current social and emotional learning environment in registered independent schools.

Information available to the Advocate on the current landscape of the social and emotional well-being of children is limited to the reports of Ministry supervisory officials attending independent schools for inspection and supervision in recent years, and from the observations of official trustees appointed to oversee two Qualified Independent Schools over the 2022-23 academic year. In all inspection forms reviewed, the boxes regarding social and emotional well-being were checked. Supervisory officials and official trustees report witnessing only appropriate interactions between school personnel and students. Our findings described earlier in this report point to significant emphasis on obedience and the potential for suppression of opportunities to raise concerns present in some independent schools, as well as the statement of concern of a third official trustee about “the potential psychological harm imposed by the instructional and disciplinary procedures of [one of the] school[s].”

As these elements were not reflected as having been identified or addressed through the inspection process, this indicates that more is needed by the Ministry to demonstrate its assessment of whether independent school environments are safe, caring, and supportive of learning processes and of the emotional well-being of students.

The Advocate notes with concern that elements regarding the societal interests and emotional well-being of students continue to be absent from the updated (draft) inspection form to be used in Qualified Independent Schools going forward.

Moreover, as these elements are more subjective than confirming the presence of a smoke alarm, documentation requires more than a checked box to affirm they have been assessed. Again, the importance of a systematic and more tangible method for conducting this assessment is important due to the increased reliance of independent schools on non-professional teachers and directors that are not accountable to the SPTRB or LEADS and the more insular nature of their services.

RECOMMENDATION #11

The Ministry of Education amend its process and forms related to inspection of all categories of registered independent schools to include qualitative documentation that the:

- **societal interests of the child are protected (the general conduct of the school is acceptable);**
- **the environment is safe and caring, and supports the learning process; and,**
- **the intellectual, emotional, and physical well-being of the children is acceptable.**

Staff Qualifications and Regulation

When considering the learning environment for children, the quality of this environment is closely tied to the qualifications, abilities, and skills of teachers and school staff. The necessity of teacher qualifications is crucial to ensuring all children receive a quality education regardless of background.

Teacher Qualification Requirements in the Provincial Education System

To teach in the Saskatchewan public or separate school systems, an individual must hold a Saskatchewan teacher's certificate issued by the Saskatchewan Professional Teachers Regulatory Board (SPTRB). There are different types of certificates requiring differing qualifications and/or levels of experience (see text box for types of certificates and qualifications required).⁸⁰ The only exception to this rule within the provincial system is for student teachers who are completing a practicum under the supervision of a registered teacher in the completion of their Bachelor of Education.

A teacher's certificate is described by the Ministry of Education as, "a statement of minimum standards to ensure students a quality of education. [...] The certification and employment process are important steps in providing for a high quality of public education and for the protection of children."⁸¹

In general, a teaching certificate demonstrates that the teacher understands the *academic* component of the subject areas in which they are teaching, knows *how* to professionally teach, and has demonstrated the *ability* to teach through a practicum.⁸²

Individuals holding teacher's certificates must register annually with, and are accountable to, the Saskatchewan Professional Teachers Regulatory Board (SPTRB). This mechanism "serves the public interest by ensuring registered teachers meet professional standards for certification, conduct and competence."⁸³ Certified teachers are required to abide by the standards of professional conduct and competence for teaching that are defined in *The Registered Teachers Act* (section 32 and 33) and administered by the SPTRB. Concerns of misconduct or incompetence involving a registered teacher can be brought to and investigated the SPTRB.

⁸⁰ *The Education Act, 1995* (section 198) & *The Registered Teachers Act* (section 28)

⁸¹ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 3.4 – Saskatchewan Professional Teachers Regulatory Board. p. 47

⁸² Minister's Advisory Board on Independent Schools. (1990). *Final Report to the Minister of Education Volume I*. Saskatoon, SK: Author. p. 80

⁸³ Saskatchewan Professional Teachers Registration Board. (n.d.) *About Us*. (Retrieved from: https://sptbr.ca/SPTRB/About_Us/Mission_and_Vision/SPTRB/About_Us/Mission_and_Vision.aspx?hkey=a206d844-caf2-44e6-85cc-1c04f681dba9)

TYPES OF TEACHING CERTIFICATES IN SASKATCHEWAN

Professional A Certificate

- Allows individual to teach all subjects in all grades
- Requires a Bachelor of Education degree, or other approved degree with 48 semester hours of approved teacher education, and academic components specific to elementary and middle school or high school

Professional B Certificate

- Allows individual to teach a specified subject in all grades
- Requires a degree in an approved area of specialization (or equivalent), and 48 semester hours of professional education above Grade 12

Vocational Certificate

- Allows individual to teach a specified subject in all grades
- Requires Grade 12 diploma, journeyperson's certificate or approved training in a trade, and 1 year of teacher education

Technical Certificate

- Allows individual to teach a specified subject in all grades
- Requires Grade 12 diploma, two years of post-secondary study in a defined technology, 2 years work experience and 1 year of teacher education

Probationary B Certificate

- Only available to independent schools
- Allows individual to teach all grades in an independent school
- Requires one of:
 - teacher's certificate from another jurisdiction;
 - degree from a recognized university or college;
 - teaching degree from a denominationally-based college;
 - degree/diploma from a theological seminary, Bible school or Bible training centre;
 - five years teaching experience in the independent school system; or,
 - other qualifications deemed appropriate by the registrar

Additional Qualification Certificate

- Allows teachers to upgrade their classification to ensure there are teachers specialized in required subject areas

Temporary Teaching Permit

- Can teach a specific grade or subject, or substitute teach – only if an employer is unable to fill the position with a certified/registered teacher
- Requires high school graduation and some post-secondary education or a specialized skill (ex. mastery in a language)

Teacher Qualification Requirements in Registered Independent Schools

When the issue of teacher qualifications was considered by the Minister's Advisory Board on Independent Schools in 1990, it was described as "one of the three or four most contentious issues that the Advisory Board considered."⁸⁴ It was agreed by the Board that funding required regulation and that this could include requirements related to teacher qualifications.

However, religiously-based independent schools asserted that, pursuant to their freedoms of religion and conscience under the Charter and as confirmed by case law in Alberta,⁸⁵ they have the freedom and authority to establish the qualifications for teachers in their schools, and that state-certification of teachers was an unnecessary intrusion into the operation of a church school and a violation of church and state. Therefore, it was their position that at least one category of independent schools was required in which teacher qualification was not regulated by the state – and that this could remain unfunded.

“Independent schools were not interested in poor quality education, but they were interested in freedom.”

– Minister's Advisory Board on Independent Schools (1990), p. 85

Additionally, as it was already recognized in *The Saskatchewan Human Rights Code* that religiously-based independent schools could restrict employment to individuals who shared the faith of the school, there was already a limited pool of potential teachers to choose from. Furthermore, without public funding, these schools would be unable to pay teachers the same salaries as public-school teachers, thereby further limiting their chances of employing a professional teacher.

On the other hand, representatives of the public education system disagreed with this interpretation of the Charter and case law, asserting that – because of the state's compelling interest in education – it was not unreasonable to require evidence that individuals educating children are effective teachers to ensure children a quality education.

After much discussion, the province determined that there would be different requirements depending on whether the independent school was religiously-based, offered secondary level credits and/or received public funding. Specifically, there was a distinction made between the "eligibility" and the "qualification" of teachers. For example, if a professional teacher were to be convicted of a sexual offence involving a child, their certificate could be removed for being "ineligible" to teach, even though they continue to possess the qualifications and skills required for certification.

Conversely, a certified teacher may be eligible to teach, but unqualified to teach in a religiously-based independent school because they do not share the same faith as the organization that owns and operates the school.⁸⁶ Additionally, as submitted to the Minister's Advisory Board on Independent Schools in 1990, Christian independent schools asserted that the Bachelor of Education programs at the two universities in Saskatchewan did not provide appropriate training for teachers intending to work in a Christian school as instruction is based in different value systems and worldviews.⁸⁷

⁸⁴ Minister's Advisory Board on Independent Schools. (1990). *Final Report to the Minister of Education Volume I*. Saskatoon, SK: Author. p. 84

⁸⁵ Regina v. Wiebe (1978) (Alberta Prov. Ct.) in Minister's Advisory Board. (1990). *Final Report to the Minister of Education*. Saskatoon, SK: Author

⁸⁶ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 3.2 – Employment Criteria for Teachers

⁸⁷ Minister's Advisory Board. (1990). *Final Report to the Minister of Education – Volume 2*. Saskatoon, SK: Author. Appendices 24 and 25

Accordingly, under *The Registered Independent Schools Regulations*, the Minister of Education can grant a “Letter of Eligibility” to an individual allowing them to teach in an unfunded religiously-based registered independent school *only*, even if they do not meet the requirements of a professional teacher.⁸⁸ Additionally, individuals providing non-credit religious instruction within a registered independent school do not require a teaching certificate.⁸⁹

There are no minimum qualifications required to receive a Letter of Eligibility. The only requirements are that the individual be over 18 years old, endorsed by the religious organization or society operating the school and complete a criminal record/vulnerable sector check. In some instances, individuals are hired as teachers through this process without a high school diploma. For context, however, it must be acknowledged that in the communities where this occurs, the independent school typically does not offer secondary level credit courses and students often discontinue their schooling at age 16, when it is no longer compulsory.

A Letter of Eligibility only authorizes the individual to teach at the specific school campus applied for and is in effect for a period of five years. Individuals holding a “Letter of Eligibility” do not register with the SPTRB and are not subject to the professional ethics, standards, and disciplinary processes outlined in *The Registered Teachers Act*.

Unfunded independent schools that are not religiously-based do not have the same exemption.

For any registered independent school – even those that are religiously-based and/or unfunded – to offer secondary level credit courses, they must be taught by certified teachers. However, in the case of unfunded independent schools, these teachers can hold a Probationary B Certificate without holding a Bachelor of Education degree (see text box in Section 7.6.1.2 for details). This certification category was created specifically for independent schools.

There is a lack of clarity within the Regulations and Policy Manual regarding the required qualifications of a principal in unfunded religiously-based independent schools. Section 16 of the Regulations requires that “[t]he board of a registered independent school shall appoint a registered teacher as the principal of the registered independent school.” A “registered teacher” is defined in section 2 as meaning “a registered teacher as defined in *The Registered Teachers Act* [...]” That Act and its corresponding bylaws do not recognize Letters of Eligibility. *The Registered Independent Schools Regulations* only specify that Letters of Eligibility apply to teaching positions, and not explicitly to the role of principal. A Ministry official advised the Advocate that this must have been an oversight when drafting the Regulations, as the intent is not to require principals of unfunded religiously-based schools to be registered. Most principals in these schools currently have Letters of Eligibility and are not registered with the Saskatchewan Professional Teachers Regulatory Board (SPTRB), meaning they are not subject to the SPTRB’s Code of Conduct and complaints process.

⁸⁸ The Registered Independent Schools Regulations (sections 17 and 18)

⁸⁹ The Registered Independent Schools Regulations (section 33)

⁹⁰ The Registered Independent Schools Regulations (subsection 16(2))

This discrepancy is one of several identified in our review where interpretations of the Regulations have been weakened in policy or practice. These issues must be rectified.

Principals in all funded categories of independent schools are required to hold a valid Professional A Certificate.⁹⁰

Non-religious independent schools, Alternative Schools, and Historical High Schools are required to employ registered teachers. However, these teachers are not required to hold a Professional A Certificate and could hold a different type of certificate issued by the SPTRB, including a Probationary B Certificate or Temporary Teaching Permit.

The Regulations do not specify that Associate Schools can not hire Letter of Eligibility teachers. However, as teachers in Associate Schools are provided by the school divisions, they require Professional A Certificates.

While it is recognized that Associate, Alternative and Historical High Schools typically employ Professional A teachers, in order to maintain transparency and accountability, and avoid practice drift over time, it is important to embed this requirement in regulation.

Qualified Independent Schools are, and have been since their inception, required by regulation to employ “only registered teachers who hold a valid Professional A Teacher’s Certificate issued pursuant to *The Registered Teachers Act*.”⁹¹ Ministry policy requires one Professional A teacher for every 40 students.⁹²

The new category of Certified Independent Schools is required to employ at least one Professional A teacher “in every classroom.”⁹³ Further, the amended Regulations require Certified Independent Schools to have a pupil to teacher ratio of 25 students or less per full-time equivalent teacher.⁹⁴

The requirement to employ provincially certified teachers in funded schools and unfunded schools offering secondary level credits, while not requiring provincial certification in other unfunded schools is typical practice across the country, with some exceptions.

On the matter of teaching qualifications in unfunded religiously-based schools, the Advocate acknowledges that there are differing and strongly held views across Saskatchewan, and in fact the country, on the appropriate extent of government oversight. As stated at the outset of this report, the Advocate agrees it is critical that our society respect all human rights, including the right to freedom of religion and conscience. However, it is also critical that the full range of children’s rights under the UNCRC be a primary consideration in all matters affecting young people. This includes the right of children and youth to a quality education that fulfills the aims identified in Article 29 of the UNCRC and that “fully prepare[s] [the child] to live an individual life in society.”⁹⁵

⁹¹ The Registered Independent Schools Regulations (clause 10.1(1)(e))

⁹² The Registered Independent Schools Policy and Procedures Manual. (2019). Section 1.5 – Registration Process for Registered Independent Schools. p. 13

⁹³ The Registered Independent Schools Regulations (clause 11.1(1)(g))

⁹⁴ The Registered Independent Schools Regulations (clause 11.1(1)(i))

⁹⁵ UNCRC Preamble

TEACHER QUALIFICATIONS REQUIRED BY CATEGORY OF REGISTERED INDEPENDENT SCHOOL

Category of Registered Independent School	Teacher Qualifications Required
Unfunded Registered Independent Schools (religiously-based)	Professional A or B Certificate, Temporary Teaching Permit or Letter of Eligibility
Unfunded Registered Independent Schools (not religiously-based)	Professional A or B Certificate, Temporary Teaching Permit
Associate Schools	Professional A or B Certificate, Temporary Teaching Permit or Letter of Eligibility (however, Professional A teachers are required by school divisions)
Alternative Schools	Professional A or B Certificate, Temporary Teaching Permit
Historical High Schools	Professional A or B Certificate, Temporary Teaching Permit or Letter of Eligibility (traditionally employs Professional A teachers)
Qualified Independent Schools	Professional A teachers (minimum ratio of 1 teacher: 40 students)
Certified Independent Schools	Professional A teachers (1 per classroom and minimum ratio of 1 teacher: 25 students)

The *Jones* case confirmed that, because the state has a “compelling interest” in the education of children, it has the ability – and even obligation – to set and enforce minimum standards within independent education, so long as it does not do so in an arbitrary or unreasonable way.

In light of advancements in both the global understanding of the rights and autonomy of the child, and of what constitutes quality education pursuant to UNCRC Article 29, it is the view of the Advocate that it would not be arbitrary nor unreasonable for the Government of Saskatchewan, via the Ministry of Education, to ensure individuals tasked with the formal education of children (or at least a proportion of individuals involved with the operation of the school) have sufficient training and evidenced competency in the provincially required areas of study and in pedagogy.

It is our view that the current requirements for granting Letters of Eligibility and a one to two-hour inspection of unfunded registered independent schools once per year is not sufficient to discharge the Ministry’s duty to respect, protect and fulfill children’s rights in this regard.

Legal arguments to this effect were presented to the Minister’s Advisory Board on Independent Schools when it was tasked with recommending regulations, policies, and procedures for the operation of independent schools in Saskatchewan. While these arguments would have been compelling even then, the provincial government’s obligations under the child rights framework have evolved parallel to understandings of children’s rights themselves. The regulatory scheme recommended by the Minister’s Advisory Board in 1990 (prior to Canada’s ratification of the UNCRC) has not kept up.

The Advocate acknowledges, however, that the logistics of this matter may require a more comprehensive constitutional/case law analysis and stakeholder consultation than can be done here. Concerns around unfunded independent schools being unable to recruit professional teachers due to the level of pay they can offer are valid. It may be that this could require a new structure for determining competency of independent schoolteachers than what is currently required by the provincial system, but that is more robust than what is currently in regulation and policy.

As the duty bearer responsible for the implementation of children’s rights within the Saskatchewan education system, it is incumbent upon the Ministry of Education to revisit this issue with these new understandings in mind.

RECOMMENDATION #12

The Ministry of Education conduct a review of the current requirements for teacher and principal qualifications in unfunded religiously-based Registered Independent Schools that must consider the current understandings of, and obligations to, the right of children and youth to a quality education to determine whether a more robust process for ensuring competency is required.

RECOMMENDATION #13

The Government of Saskatchewan amend *The Registered Independent Schools Regulations* to require all categories of funded registered independent schools, inclusive of Alternative, Associate and Historical High Schools, to only employ teachers who hold a valid Professional A Certificate issued pursuant to *The Registered Teachers Act*.

Professional Teacher to Student Ratio in Qualified and Certified Independent Schools

There are no provincial mandates regarding the teacher to student ratio in the public and separate school divisions or the Conseil scolaire fransaskois, rather school divisions can set their own targets. For instance, the Saskatoon Public School Division's "Administrative Procedure 401 – Staffing Guidelines" directs that there be one instructional professional staff per 23-26 students, with variations between elementary and secondary schools.⁹⁶

In 2019, the Ministry of Education reported the average class size in rural school divisions was 17.8 students, while the average was 21.1 students in Regina and Saskatoon. However, there are disputes regarding these calculations,⁹⁷ with teachers being reported as often responsible for classes of 22 to 40 students at a time.⁹⁸

For Qualified Independent Schools (QIS), Ministry policy states that "QIS are required to employ only teachers with a Professional A teaching certificate as classroom teachers. QIS must employ a minimum of one Professional A teacher for every 40 students with a buffer of plus or minus five students. This is the minimum number of teachers that must be present when the school is open to students."⁹⁹ The principal must be one of the Professional A teachers and be employed on a full-time basis.

Policy also states that all secondary level courses for which students receive credits must be taught by Professional A teachers "who [are] physically present in the location, in Saskatchewan, where instruction is taking place."¹⁰⁰

Registered Independent Schools are required to report on the number of Professional A teachers they employ when applying for certification as a Qualified Independent School. Every year, Ministry policy requires all registered independent schools to provide "the names of the [...] teachers teaching in the school, along with their eligibility or qualifications" when submitting their Annual Returns.¹⁰¹ Additionally, all certified teachers in Saskatchewan must register annually with the SPTRB and complete an Electronic Educator Profile (EEP) every fall.¹⁰² Ministry staff cross-check information provided by Qualified Independent Schools on their Annual Returns against either the SPTRB or EEP at the beginning of each year to verify that independent schools have the appropriate number of qualified teachers. Schools are also expected to "promptly notify the ministry of any changes during the academic year with respect to its teaching staff."¹⁰³ Additionally, policy states that "[w]hen visiting a registered independent school, the supervisory official will check whether all registered independent school teachers hold a Letter of Eligibility or are certified teachers."¹⁰⁴ However, there is no space on inspection or supervision documentation used by Ministry staff in the oversight of Qualified Independent Schools to confirm continued adherence to policy standards throughout the year.

⁹⁶ Saskatoon Public Schools. (April 2023). *Administrative Procedures Manual*. (Retrieved from: <https://www.saskatoonpublicschools.ca/division/adminproceduresmanual/Documents/Administrative%20procedure%20Manual%20complete%20with%20TABLE%20OF%20CONTENTS%202023%2006%2022.pdf> 16 June 2023)

⁹⁷ The STF is reported as stating these averages were not reflective of typical classrooms, as they included smaller groups, such as student support services and English as an Additional Language classes in the calculation of the average class size.

⁹⁸ Hunter, A. (2019, May 10). Teachers Union President Says Sask. Government's Stated Average Class Size of 19 Not 'Reality'. *CBC News*. Retrieved March 29, 2023 from <https://www.cbc.ca/news/canada/saskatchewan/sask-class-size-1.5131249#:~:text=Saskatchewan's%20average%20class%20size%20for,is%2019.1%20students%20per%20class>.

⁹⁹ The Registered Independent Schools Policy and Procedures Manual (2019). Section 1.5 - Registration Process for Registered Independent Schools. p. 13

Available data from the Ministry indicates that, in the past five academic years, Qualified Independent Schools met the overall required number of Professional A certified teachers – and that the Ministry addressed instances where they temporarily did not. In fact, many schools exceeded these expectations, and often had a higher Professional A teacher to student ratio than schools in the provincial system. During this time period, only 2 - 5 Qualified Independent Schools had a ratio of 1 Professional A teacher to 25 students or more. In each of these cases, there were still less than 40 students per one Professional A teacher.

The category of Certified Independent Schools was newly created with amendments made to the Regulations in March 2023. As indicated above, Certified Independent Schools are required to maintain a ratio of one Professional A teacher to every 25 students, and there is to be a Professional A teacher in every classroom. To date, there is only one school in the Certified Independent School category. Throughout its operation, there has consistently been more than one Professional A teacher to every 25 students.

Our review found evidence that the Ministry of Education enforces this requirement in Qualified Independent Schools when it is aware of non-compliance. For example, in 2016 and again in the spring of 2022, formal letters were sent to the same Qualified Independent School once it became known to the Ministry that the school had less than the required number of Professional A certified teachers. In both instances, qualified teachers were quickly hired, and the issue was resolved. The Advocate notes, however, that because supervision forms do not prompt Ministry to document whether a school is compliant, it was possible in at least one instance for this school to overlook or avoid disclosing to a Ministry official during a supervision visit that a Professional A teacher had left its employ and had not yet been replaced, resulting in a delay in the Ministry becoming aware.

These circumstances illustrate the importance of Ministry staff being prompted to confirm compliance to this requirement at intervals throughout the year.

Further to its October 2023 update to The Registered Independent Schools Policy and Procedures Manual, the Ministry now requires supervising officials to review compliance with all registration criteria during one of the three supervision visits during the year. In addition to the staff list provided on each school's Annual Return, this addition to the supervision process offers a second opportunity for the Ministry to confirm that Qualified and Certified Independent Schools are adhering to the student to Professional A teacher ratio. The updated Manual also clearly identifies violations involving Professional A teachers as an example that may lead to a school's certificate of registration being suspended.

¹⁰⁰ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 1.5 - Registration Process for Registered Independent Schools. p. 14

¹⁰¹ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 2.1- Annual Reporting Requirements for Registered Independent Schools

¹⁰² The Registered Independent Schools Policy and Procedures Manual. (2019). Section 1.5 - Registration Process for Registered Independent Schools; and Government of Saskatchewan. (n.d.) *Electronic Educator Profile*. (Retrieved from: <https://www.saskatchewan.ca/government/education-and-child-care-facility-administration/teaching-in-saskatchewan/electronic-educator-profile>)

¹⁰³ The Registered Independent Schools Policy and Procedures Manual. (2023). Section 3.2 – Employment Criteria for Teachers, p. 60

¹⁰⁴ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 3.2 Employment Criteria for Teachers. p. 43 & The Registered Independent Schools Policy and Procedures Manual. (2023). Section 3.2 Employment Criteria for Teachers. p. 60

These are positive steps. Nonetheless, due to what has been described to our office as frequent turnover in staff and the circumstances in the example provided above, the Advocate urges the Ministry to further address this gap confirming the number of Professional A teachers each supervision visit and document its findings on the supervision form.

RECOMMENDATION #14

The Ministry of Education require the Independent Schools and Home-based Unit to confirm and document compliance with the Professional A teacher to student ratio at each supervision visit of Qualified and Certified Independent Schools.

Use of Para-Professional Staff in Qualified Independent Schools

Despite technically meeting policy standards regarding the number of required Professional A teachers, the Advocate notes there was a lack of clarity and consistency between regulatory requirements, Ministry policy and accepted practice regarding the expectations on Professional A teachers in Qualified Independent Schools, especially within the elementary and middle grade levels.

In all educational systems in Saskatchewan (provincial and registered independent schools), Boards of Education can employ any teaching, supervisory or educational assistants they feel are necessary in addition to certified teachers. There are no legislated qualification requirements for these positions in either system.

The Ministry's expectation for Qualified Independent Schools is that the required number of Professional A teachers are to be physically present in the building during school hours and that all students are to be "assigned" to a Professional A teacher. This teacher is ultimately responsible for lesson development and formal assessment of students. A Ministry official advised that Professional A teachers are to perform all direct teaching functions, but that other staff can oversee non-direct teaching activities, such as students completing workbooks.

Section 34 of *The Registered Independent Schools Regulations* specifies that, for a student to be eligible for secondary level credit, the course must be taught by a registered teacher who "is physically present in the classroom with the pupils when instructing or supervising the instruction of the course [emphasis added]." There is not a similar regulatory requirement for the teacher to be "physically present" during the instruction of elementary or middle level students.

The Ministry stated to our office that "[e]ducational assistants [in qualified independent schools] may support students and assist teachers with both teaching and non-instructional tasks while under the supervision of a Professional A teacher. The teacher may temporarily

leave the students under the care of an education assistant while providing instruction in another classroom, without being in violation of the regulations. All instruction, lesson plan development and formal assessments are conducted by the Professional A teacher.” Ministry officials said that all non-professional staff/educational assistants must be assigned to a Professional A teacher for supervision.

On this, the Registered Independent Schools Policy and Procedures Manual states:

The distinction between a teacher and an educational assistant is based upon the person’s assigned duties and the performance of these duties. A teacher oversees the provision of instruction or provides instruction to students, while an educational assistant assists in the work of a school under the direction of the principal or a teacher.¹⁰⁵

Yet, in practice, there is some question as to whether Professional A teachers have been utilized in *all* Qualified Independent Schools as expected.

Many Qualified Independent Schools employ an individualized/non-direct teaching approach known as “individualized mastery-based education.”¹⁰⁶ Typically, this involves having students read through and complete workbooks on their own and at their own pace. Students complete and correct their own assignments and come to classroom staff only if they have questions. The schools utilizing this approach typically tend to be larger with lower Professional A teacher to student ratios. Even though it is the Ministry’s expectation that direct teaching is done by a Professional A teacher, as there can be little direct teaching done in these classrooms, this can result in non-professional teaching staff serving as the primary classroom contact for students on a daily basis.

A concern raised around this issue was that non-professional staff, as the primary contact for students, may not be sufficiently trained to address student questions regarding the subject matter, or to identify and address any learning challenges or intensive needs experienced by students proactively and effectively.

Prior to the 2022-23 school year, the Ministry did not have a practice of observing or confirming that supervision of non-professional staff was taking place. Inspection and supervision forms did not include a place to document whether these expectations were being met. Ministry officials did not meet with, observe, or discuss their day-to-day duties with non-professional staff/educational assistants during their inspection or supervision visits.

We heard of historical instances where professional staff would be switched out with non-professional staff when a school was aware of a supervision visit. We found a very recent instance in which a non-professional staff person was wholly responsible for classroom instruction and was not being properly supervised by a professional teacher – even though the school had the required professional teacher to student ratio.

¹⁰⁵ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 3.2 - Employment Criteria for Teachers. p. 43

¹⁰⁶ The subjects in which this approach is used include Math, Social, Science, Word Building, English, and Literature and Creative Writing. Other subjects, such as Music, Drama, Physical Education, and Art, are taught in a larger group setting.

Additionally, several concerns regarding the role and duties of non-professional teaching staff were raised by an official trustee appointed to a Qualified Independent School. Although the school was closed before the official trustee had the opportunity to observe it in operation, from a file review and interviews with school staff, the official trustee found that teaching duties were assigned to non-teachers, and that the school director – who was not a professional teacher – was inappropriately in charge of the instructional program and supervision of the professional practices of teaching staff.

Notably, these issues had not been identified or addressed in the previous five years of supervision documentation of this school reviewed by the Advocate. When asked about these circumstances, the Advocate was told that Ministry staff “ensured [this individual] was not the teacher of record for any classes, period” and that only Professional A teachers were “putting the marks in.”

This evidence suggests that previous oversight of the Ministry in this regard was focused on whether student marks were being “entered” or “signed off” “in the name of” a Professional A teacher, or who was performing data entry, rather than the actual instructional experience of students.

Changes have been made by the Ministry to address these concerns. The Policy and Procedures Manual has been updated to increase clarity on the role and duties of non-professional staff. For instance, a statement has been added to the Manual that, “Teaching assistants, educational assistants, aides, or other paraprofessionals are not permitted to be called “teacher” or “supervisor” or to supervise students on a full-time basis.”¹⁰⁷ The Ministry now requires records to be kept detailing supervision of non-professional staff/educational assistants by professional teachers and reviews these records during supervision visits. The “Qualified Independent School Supervision of Instruction” form has been amended to include prompts for this assessment and space to document observations.

These improvements to practices of oversight are positive.

The Advocate acknowledges that most Qualified Independent Schools have low enrolment numbers and low student to professional teacher ratios. Therefore, in most cases, students in Qualified Independent Schools are likely to benefit from learning environments primarily presided upon by professional teachers. The Advocate also acknowledges the current realities faced by the provincial system regarding class size and complexity. Provincial classrooms are reported to be “bursting at the seams,” and concerns have been raised that students are not able to receive the attention they need with many positions being filled by individuals with temporary teaching permits (i.e. not certified/registered teachers – see text box in Section 7.6.1).¹⁰⁸

Ideally, there would be an individual with the level of knowledge, skill and ability evidenced by the granting of a Professional A Certificate in every classroom in Saskatchewan. However, requirements can not be placed on independent schools that can not even be met by the provincial system.

Although the Advocate strongly urges the Ministry consider requiring a Professional A teacher in every classroom in funded independent schools, as a result of the improvements made to the Ministry's supervision processes to now confirm non-professional staff are not inappropriately taking on teaching roles, the Advocate will not make further recommendations in this regard.

7.6.2 Teaching and Learning Processes and Materials

Goals of Education

The Minister of Education is responsible for “establishing goals and objectives for the elementary and secondary education system.”¹⁰⁹ Accordingly, the “Goals of Education for Saskatchewan” have been created to provide a roadmap for fulfilling the rights of children and youth to a quality education that develops their whole person.

These goals include not only the acquisition of basic skills, but the development of self-confidence, understanding and respect for others who are different from oneself, and to respect for family, religion, and culture in a pluralistic society (see the following for the full Goals of Education).

GOALS OF EDUCATION FOR SASKATCHEWAN

The goals of education recognize the inherent worth and value of each individual. Education, then, should develop the potential of each person to the fullest extent. It should also enhance the ability of each individual to cope effectively in a changing physical, economic and social environment.

Basic Skills

- Read, write, and compute.
- Acquire information and meaning through observing, listening, reading, and experiencing.
- Process information through intellectual and technological means.
- Solve problems by applying basic principles and processes of the sciences, arts, and humanities.
- Communicate ideas through written and spoken language, mathematical symbols, and aesthetic expression.

¹⁰⁷ The Registered Independent Schools Policy and Procedures Manual. (2023). Section 1.7 – Registration Process for Qualified Independent Schools. p. 21)

¹⁰⁸ Sciarpelletti, L. (21 July 2023). Sask. Teachers' Federation says province is refusing to bargain on class size, classroom complexity. *CBC News*. (Retrieved from: <https://www.cbc.ca/news/canada/saskatchewan/sask-teachers-federation-says-government-is-refusing-to-bargain-on-class-size-classroom-complexity-1.6913946>)

¹⁰⁹ *The Education Act, 1995* (clauses 3(2)(d) and 4(1.1)(a))

Life-Long Learning

- Seek and value learning experiences.
 - Act as self-reliant learners.
 - Base actions on the knowledge that it is necessary to learn throughout life.
-

Understanding and Relating to Others

- Act on the belief that each individual is worthwhile.
 - Base actions on the recognition that people differ in their values, behaviours, and lifestyles.
 - Interact and feel comfortable with others who are different in race, religion, status, or personal attributes.
 - Develop a sense of responsibility toward others.
-

Career and Consumer Decisions

- Develop an awareness of career opportunities.
 - Develop interests and abilities in relation to vocational expectations.
 - Adapt to shifts in employment patterns and technology.
 - Make informed consumer decisions.
-

Membership in Society

- Assume responsibility for own actions.
 - Work with others to achieve individual and group goals.
 - Participate in the democratic processes of government and perform the duties of citizenship.
 - Respect the rights and property of others.
 - Act with honesty, integrity, compassion, and fairness.
 - Develop a sense of national pride and acknowledge the need for international understanding.
 - Work toward greater social justice.
 - Assume responsibility for dependent persons in a manner consistent with their needs.
 - Respect law and authority.
 - Exercise the right of dissent responsibly.
-

Self-Concept Development

- Perceive themselves in a positive way.
- Appreciate own abilities and limitations.
- Set and work toward personal goals.
- Assess praise and criticism realistically.
- Present themselves with confidence.

Positive Lifestyles

- Practice appropriate personal hygiene, engage in sufficient physical activity and maintain a nutritionally balanced diet.
- Avoid harmful use of alcohol and other drugs.
- Cultivate interests that may be the basis for personal development and leisure pursuits.
- Recognize the importance of productive activity.
- Display initiative and pursue tasks diligently.
- Maintain a safe and healthful community.
- Respect and seek to enhance the environment.
- Appreciate beauty in its many natural and constructed forms.
- Express themselves creatively.

Spiritual Development

- Seek an understanding of the purpose and worth of human existence.
- Develop a knowledge of God.
- Respect family, religion, and culture in a pluralistic society.

Growing with Change

- Work toward immediate and long-term goals.
- Base actions on an understanding that change is a natural process in society.
- Select workable alternatives in response to changing conditions.
- Develop confidence in making decisions that involve risk.

(Source: The Registered Independent Schools Policy and Procedures Manual. (2019). Independent School Registration (Form A))

In the case of unfunded independent schools, clause 5(1)(e) *The Registered Independent Schools Regulations* require only that the school “has goals of education that are, in the opinion of the minister, **not inconsistent with** the goals of education for Saskatchewan [emphasis added].”¹¹⁰ The Regulations are silent on specific requirements expected of Associate Schools and Historical High Schools in this regard, meaning that this minimum standard is applied.

In contrast, to be approved as a Qualified Independent School, Certified Independent School, or Alternative School for the purposes of receiving public funding, the school must, “in the opinion of the minister, **subscribe[...]** to the goals of education for Saskatchewan [emphasis added].”¹¹¹

¹¹⁰ The Registered Independent Schools Regulations (clause 5(1)(e))

¹¹¹ The Registered Independent Schools Regulations (clauses 9(1)(e), 10(1)(k), 11.1(1)(a))

Section 26 of the Regulations further states:

- (1) Each registered independent school has the freedom to **add to the goals of education** for Saskatchewan and to define responsibility for their achievement among the school, the home, the religious order or society and the community [emphasis added].
- (2) Subject only to such reasonable limits prescribed by law that can be demonstrably justified in a free and democratic society, clause 5(1)(e) is not intended to diminish or infringe on the religious conscience of the owner or operator of any registered independent school.

The Minister's Advisory Board on Independent Schools *Final Report to the Minister of Education* (1990) stated that, "A common set of educational goals are needed to create a common sense of direction for our society while affording sufficient latitude to accommodate the aspirations of all parents for their children."¹¹² It further stated that, "While a degree of educational diversity is clearly a public good, it is only a public good so long as the graduates of different types of schools can still live peaceably together in the same society. [...] Independent schools should not be permitted to promote such things as racial or ethnic superiority, religious intolerance, social change through violent action, or sedition. Rather, both public and independent schools should be promoting 'understanding and relating to each other'."¹¹³

The Registered Independent Schools Policy and Procedures Manual requires that all schools provide a copy of their goals of education prior to being issued a certificate of registration.¹¹⁴

To assess whether the goals of education of a prospective independent school are "not inconsistent" with those of the province, Ministry officials advise they review them side by side and discuss any questions they may have with the prospective school. Current Ministry leadership reports they have never had an application come through that was "inconsistent" with the provincial goals.

To be eligible for registration as a Qualified Independent School (QIS), a school must operate without funding for a minimum of two years. The QIS Application Form contained within the previous Manual reminds the applying school of the requirement to subscribe to the Goals of Education for Saskatchewan. There is no requirement for the school to re-submit its goals of education for review, nor to make a formal commitment to the provincial goals in its own policies and procedures at the time of application. At the time of writing, the Ministry advised our office that it was reviewing this application form for potential revision, and developing one for Certified Independent Schools, but this process was not yet complete.

When the Advocate requested the goals of education for all independent schools in the province for the purposes of this investigation, the Ministry either had to request them from

¹¹² Minister's Advisory Board on Independent Schools. (1990). *Final Report to the Minister of Education*. Saskatoon, SK: Author. p. 8

¹¹³ Minister's Advisory Board on Independent Schools. (1990). *Final Report to the Minister of Education*. Saskatoon, SK: Author. p. 48

¹¹⁴ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 1.4 – Goals of Education for Registered Independent Schools

schools or retrieved them from school handbooks that had only been collected in August 2022, as – for the most part – they did not have them in their files. The Advocate was advised that the schools already in operation when regulations were introduced were grandfathered in, or, if they had submitted goals of education after this time, they may have been archived.

Both the former and the updated versions of The Registered Independent Schools Policy and Procedures Manual states that, “[w]hen inspecting or supervising registered independent schools, the supervisory official will check for conformity of educational practice with the submitted goals of education for each school.”¹¹⁵

If the Ministry was not maintaining current copies of an independent school’s goals of education, it raises the question of how its staff could have assessed the school’s educational practice against them as per its policy. This is particularly relevant for new supervisory staff who do not have the benefit of existing relationships with the schools.

This gap in process has been rectified by the recent amendments to regulation and policy. All independent schools are now required by regulation to establish administrative policies and procedures, and to provide these to the Ministry upon development, as well as any time they are amended, replaced, or removed.¹¹⁶ The Registered Independent Schools Policy and Procedures Manual identifies the school’s goals of education as a required element in its administrative policy manual, therefore, ensuring the Ministry will receive this information on an ongoing basis.¹¹⁷

In regard to the content of the goals of education reviewed by the Advocate, there was inconsistency as to whether and to what extent the provincial goals were reflected.

Some schools in all categories (whether unfunded or funded) have developed statements or philosophies that reflect the Goals of Education for Saskatchewan and the aims of education identified in UNCRC Article 29. This is done either through documents specific to their goals of education, or more generally throughout student/parent handbooks as a whole. In some instances, there are additions of religious values, as per section 26 of the Regulations, and/or slight changes to phrasing that still maintain the original spirit. This is positive.

However, even in several cases where the provincial goals were generally reproduced, we noted that schools specifically omitted references to the recognition that people differ in values, behaviours, and lifestyles; to interacting and feeling comfortable with others who are different in race, religion, status, or personal attributes; and/or respect for family, religion, and culture, specifically, in a “pluralistic society.” Others made very little reference to elements within the Goals of Education for Saskatchewan, instead focusing either on operational logistics, such as dress codes and fees, or were specific to the values of the religious order or society operating the school.

¹¹⁵ The Registered Independent Schools Policy and Procedures Manual. (2023). Section 1.5 – Goals of Education for Registered Independent Schools. p. 17

¹¹⁶ The Registered Independent Schools Regulations (section 39.2)

¹¹⁷ The Registered Independent Schools Policy and Procedure Manual. (2023). Section 2.6 – Administrative Policies and Procedures for Registered Independent Schools

We acknowledge that unfunded schools are not required to adopt the provincial Goals of Education. Additionally, the Regulations do not explicitly require funded schools to adopt the provincial goals verbatim, but only to subscribe to them “in the opinion of the minister.”

The omissions identified here may not amount to overt “inconsistency” with the provincial goals of education considered in 1990, such as advocating for violence or sedition. However, they run the risk of not meeting obligations under UNCRC Article 29 for education to be directed toward the development of respect for “human rights and fundamental freedoms”, “respect for civilizations different from his or her own”, and/or “the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.”

Acknowledging again that the rights to freedom of religion and conscience held by many independent schools can not be unreasonably infringed, the Advocate recalls UNCRC Article 29(2) stating that the liberty of individuals and organizations to operate their own educational institutions is “subject always to the observance of the principle set forth in paragraph 1 of [Article 29] and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.”

The Regulations speak specifically to the ability of independent schools to “add to” the goals of education for Saskatchewan, rather than to detract from them. The Registered Independent Schools Policy and Procedures Manual describes the Goals of Education for Saskatchewan as, “intended to be inclusive, not exclusive – to encompass all legitimate perspectives in our pluralistic and multicultural society. They are intended to provide sufficient latitude to accommodate the aspirations of all parents/guardians for their children [...]”¹¹⁸ Therefore, specific omission of educational goals related to recognition of and comfort with differences in a pluralistic society should not be required. The ability to add to the Goals of Education for Saskatchewan protects the ability of all independent schools to add the distinctive elements within their philosophies of education as part of this pluralism.

The Advocate asserts that the Ministry’s ability to ensure all educational services in the province – especially those that receive public funding – respect the freedom of religion and conscience, as well as align with provincial human rights legislation *and* UNCRC Article 29 is supported by current regulatory obligations related to the goals of education of independent schools. However, there is opportunity for more objectivity and consistency in the Ministry’s assessment of these goals. This objectivity could be achieved by explicitly requiring funded independent schools to formally commit to the Goals of Education for Saskatchewan. This commitment is made in some form by public and separate school divisions, such as by including statements in policy manuals for Boards of Education requiring them to: “Ensure [...] students in the division have the opportunity to achieve the goals of education set by the Ministry of Education and the Board.”

¹¹⁸ The Registered Independent Schools Policy and Procedure Manual. (2019). Section 1.4 – Goals of Education for Registered Independent Schools. p. 9; The Registered Independent Schools Policy and Procedure Manual. (2023). Section 1.4 – Goals of Education for Registered Independent Schools. p. 16

RECOMMENDATION #15

The Government of Saskatchewan amend *The Registered Independent Schools Regulations* and *The Registered Independent Schools Policy and Procedures Manual* to require all schools to make a formal commitment to adhere to the Goals of Education of Saskatchewan upon application for funding, and as updated or amended by the Minister of Education.

RECOMMENDATION #16

The Ministry of Education develop a process through which to objectively assess the goals of education of a prospective or existing registered independent school against the Goals of Education for Saskatchewan and document the rationale for, and outcome of, its assessment. This process must consider whether the goals of education submitted by an independent school align with the aims of education identified in Article 29(1) of The United Nations Convention on the Rights of the Child.

Curriculum and Programming

All registered independent schools are required by regulation to “provide instruction in the required areas of study as determined by the Minister.”¹¹⁹ The Ministry of Education has identified seven required areas of study including arts education, health education, language arts, math, physical education, science, and social studies.¹²⁰

The Registered Independent Schools Policy and Procedures Manual states, “Each registered independent school has the freedom to provide instruction in the required areas of study from a particular religious or philosophical perspective, in conformity with its own goals of education, previously submitted to the Ministry of Education.”¹²¹

Although amendments to *The Education Act, 1995* in October 2023 gave parents the “right to: [...] make decisions as to which courses of study the pupil enrolls in [...]”,¹²² the Ministry advised our office that this would not include the ability to withdraw a student from a course in the required areas of study. Other than providing instruction in these areas, the different categories of registered independent schools have different expectations in regard to curriculum and programming.

¹¹⁹ The Registered Independent Schools Regulations (subsection 30(1))

¹²⁰ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 4.1 – Instruction

¹²¹ The Registered Independent Schools Policy and Procedures Manual Section. (2019). 4.1 – Instruction. p. 48

¹²² Bill 137 – An Act to amend The Education Act, 1995 respecting parental rights
(Retrieved from: <https://publications.saskatchewan.ca/#/products/122291>)

Unfunded Registered Independent Schools

Unfunded schools are not required by regulation or policy to follow the provincial curriculum. This is typical practice across the country. However, they must ensure that instruction in the seven required areas of study is:

- appropriate for the age and ability of the pupils,
- comparable in quality to that of schools administered by a board of education or the Conseil scolaire fransaskois, and
- consistent with generally accepted teaching principles with respect to academic content and teaching methods.¹²³

The Registered Independent Schools Manual states that this requirement “is not a question of conscience as long as the school retains the freedom to choose which programs or courses to teach in these required areas.”¹²⁴

Annual inspections are often the Ministry’s sole method of assessing whether the seven required areas of study are being taught within unfunded schools in a comparable manner to the provincial system, and whether these conditions are being met. When inspecting independent schools, the Manual states that Ministry staff “will assume that the registered independent school is providing instruction comparable in quality to that of public/separate schools and les écoles fransaskoises unless there is evidence to the contrary.”¹²⁵

Our office reviewed inspection reports for a sample of unfunded Registered Independent Schools and found that most were determined by the Ministry to be providing appropriate instruction in all required areas of study. However, one unfunded school in our sample was not providing instruction in all seven required areas in its first three years of operation from 2016 to 2019. Specifically, for at least two of these years, the school was not teaching science. A Ministry official advised the Advocate that this school struggled to find a science resource in alignment with its religious perspective.

This school offers Kindergarten to Grade 9 and enrolled 37 to 53 students during the years in question. As a result, a significant number of students were left without an education in a critical area for up to three years. For some students, this could have encompassed their entire middle school experience (i.e. Grades 7, 8 and 9), leaving them at a significant academic disadvantage in relation to future opportunities.

The Advocate understands that students in the community served by this school typically do not elect to go on to secondary education. However, young people have a right to be adequately prepared for secondary and higher education, and for the world at large. The Ministry of Education has an obligation to take appropriate action if students in independent schools are not receiving a comparable education to those in provincial schools.

¹²³ The Registered Independent Schools Regulations (subsection 30(2))

¹²⁴ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 4.1 – Instruction. p. 48

¹²⁵ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 4.1 – Instruction. p. 48

Ministry documentation indicates that the school was reminded of its obligation to teach in all seven required areas immediately following annual inspections. However, there is no record of any additional communication or support provided by the Ministry in between annual inspections to assist the school in meeting this obligation. This is despite provincial policy in place at the time giving the Ministry the ability to develop a collaborative plan with the school to address concerns identified through inspection, to monitor progress by making more frequent visits, and to take steps to suspend or cancel the school's registration if it were unwilling to address the concern. A Ministry official stated that suspending or cancelling the school's registration was "the only option" available, but that it would not have been ideal as it would have resulted in the students being left without formal schooling outside of home-based education. This approach neglects the available option of developing a collaborative plan and providing support to the school.

The Advocate notes that The Registered Independent Schools Policy and Procedures Manual appears to offer more flexibility in expectations around instruction in the seven required areas of study than is required by the Regulations. Despite Regulations stating that all schools "shall provide instruction in the required areas of study" and that this instruction "must be: [...] comparable in quality to that of" provincial schools, the Manual states that, "A registered independent school **must agree to and be seen to be striving to meet** the requirements for instruction in the required areas of study [emphasis added]."¹²⁶ Considering the importance of each area in a child's education, there ought not to be any ambiguity regarding the obligation of schools – whether or not they receive funding – to ensure all required areas of study are taught in an appropriate and comparable manner.

Although our sample revealed only one school in which the seven required areas of study were not taught over a period of time, it raised questions as to whether this may also be occurring in other schools, as well as concerns about the Ministry's past practices for addressing this issue.

Although policy allowed for more frequent visits from Ministry staff to address concerns, prior to recent amendments, the Regulations only allowed the Ministry to supervise unfunded registered independent schools if:

- the school itself requested supervision,
- secondary level credit courses were offered, or
- a teacher sought to be accredited by the Ministry.¹²⁷

Nonetheless, the Advocate was advised that Ministry staff will also attend an unfunded school more often, as well as request that it submit course outlines, if the school advertises that it is following the Saskatchewan curriculum. Although this requirement does not appear in policy, the Ministry reported that it has never faced resistance to this practice. The Ministry states that four non-religiously-based unfunded schools currently purport to follow the Saskatchewan core curriculum.

¹²⁶ The Registered Independent Schools Policy and Procedures Manual Section. (2019). 4.1 – Instruction. p. 48

¹²⁷ The Registered Independent Schools Regulations (subsections 20(2), 21(1) and 34(d))

Even prior to recent regulatory amendments, all registered independent schools were compelled to “permit inspection by the ministry, at all reasonable times.”¹²⁸ Recent amendments to the Regulations also allow for increased robustness of oversight of unfunded schools, by removing the requirement for an unfunded school to request supervision by the Ministry. The Ministry now has the authority to supervise any registered independent school at its discretion. The Ministry advises this supervision could be performed if concerns arise during the course of inspection or are reported to the Ministry. Furthermore, the Ministry now has the ability to formally put a registered independent school on probation. Although the probationary process does not differ significantly from the previous process that was in policy, embedding it in Regulation gives the Ministry’s authority in this regard more weight.

Considering that the Ministry’s inspection process was able to identify the lack of instruction in all seven required areas of study, the Advocate would expect that the discretion to put schools under supervision and/or probation will be triggered by circumstances such as what has been described here. A Ministry official indicated that this would occur. As these changes have the potential to address the Advocate’s findings related to lack of follow-up with the school, the Advocate’s recommendation in this regard is focused on strengthening policy language on the obligation of schools to provide instruction in all required areas of study. Nonetheless, our office will be monitoring the impact of the new regulations in this regard through our regular advocacy processes.

RECOMMENDATION #17

The Ministry of Education amend the Registered Independent Schools Policy and Procedures Manual to reflect the regulatory requirement that all registered independent schools “shall provide instruction in the required areas of study”, rather than “be seen to be striving to meet the requirements for instruction in the required areas of study.”

RECOMMENDATION #18

The Ministry of Education’s Independent and Home-based Education Unit require at least one additional visit per year in unfunded registered independent schools with a view to ensuring the seven required areas of study are being taught, the requirements of instruction are being met and the interests, well-being and rights of children and youth are being respected, protected, and fulfilled.

¹²⁸ The Registered Independent Schools Regulations (section 24)

Qualified Independent Schools

Qualified Independent Schools, on the other hand, are required to “conform [...] to provincial curriculum policy.”¹²⁹

Within each grade level subject area (ex. social sciences, math, art, science, health, and so on) the province has identified required curriculum outcomes that reflect what students are expected to achieve in that particular subject area by the end of the year. Curriculum outcomes are broad and are, therefore, accompanied by various indicators (i.e. signposts) that offer more specificity in terms of what students should know. Indicators provide tangible evidence that – or ways of measuring whether – students have achieved the required outcomes. Teachers are able to develop their own indicators that are responsive to student interests, lives, and prior learning. However, these teacher-developed indicators must align with the intent of the outcome.

When applying for approval as a Qualified Independent School, The Registered Independent Schools Policy and Procedures Manual requires the submission of course outlines demonstrating how the school plans to address the outcomes of the Saskatchewan curricula.¹³⁰ The Ministry of Education keeps funded schools updated on curriculum development.

There is no requirement in regulation or policy to re-submit course outlines after the initial registration process. Rather, assessment of whether the school is continuing to meet curriculum objectives is to be conducted through supervision visits. Ministry officials and staff advise they will periodically request updated course outlines if they have changed or there has been a turnover in teachers. We observed evidence of these requests within supervision documentation. However, our review found several instances in which course outlines were missing from Ministry files. The Advocate was advised that – while Ministry staff would make efforts to collect these documents – unless a concern was noticed through supervisory visits, they may not insist. A Ministry official stated that, “We’re really pushing harder on that to make sure they’re all in.”

Once received, Ministry staff are to ensure all curriculum outcomes are addressed within course outlines and provide feedback to teachers on how to achieve any outcomes that may be missing. Our review of a sample of course outlines found that some were very comprehensive. Many included reference to all required curriculum outcomes, but there were instances in which some were missing. The majority did not refer to specific indicators or provide information on how classroom activities were connected to achieving the outcome in question. The Advocate did not observe record of conversations with teachers on missing curriculum outcomes in the sample of supervision documentation reviewed for the past five years.

“There are different ways of delivering material. [...] At the end of the day – are children learning? Are they able to succeed? There [are] students that have gone off and done some great things, and they’ve come through the [independent] system. [...] It’s different pedagogy. It’s different ways of getting to the same end.”

– MINISTRY OF
EDUCATION STAFF

¹²⁹ The Registered Independent Schools Regulations (clause 10.1(1)(c))

¹³⁰ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 1.5 – Registration Process for Registered Independent Schools

However, Ministry officials report that the course outlines submitted by Qualified Independent Schools are on par with those developed by teachers in the provincial system, and that, going forward, supervisory officials will work with school staff to fill in any gaps that may be present. In light of the gaps in curriculum identified by Ministry experts in the following section of this report, it is critical that the Ministry ensure it is aware of and addresses any weaknesses in this regard.

RECOMMENDATION #19

The Ministry of Education's Independent Schools and Home-based Education Unit ensure it has updated course outlines for all grades in the seven required areas of study offered in Qualified and Certified Independent Schools and address any curriculum outcomes and indicators that may be missing.

Individualized Mastery-Based Approach

There is significant diversity among the instructional practices in independent schools across Saskatchewan. They do not all operate the same. The Registered Independent Schools Policy and Procedures Manual states that:

Instructional practice may reflect current accepted educational theory about the means by which learning occurs rather than be based upon a single theoretical framework. Ministry supervision will take into account varied instructional methods, classroom management and organization such as whole group instruction and individualized programming.¹³¹

The Advocate took note of concerns raised with the individualized mastery-based approach to education referred to earlier as in use within several Qualified Independent Schools.

This approach is endorsed by the Saskatchewan Association of Independent Church Schools (SAICS), which is comprised of representatives from several schools to promote the objectives and protect the freedoms of this group.¹³² According to its website, 7 of the 21 Qualified Independent Schools currently in operation were members of SAICS as of 2019 (this was formerly eight Qualified Independent Schools, as one SAICS-affiliated schools had its registration cancelled in 2022).¹³³

Although there are some differences in practices of SAICS-affiliated schools, they have historically shared the same general resources and approach to instruction.

¹³¹ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 41.1 – Instruction. p. 48

¹³² www.saics.ca

¹³³ SAICS School Listing - <http://www.saics.ca/schools.aspx>

SAICS has developed its own instructional resources based on the Accelerated Christian Education (A.C.E.) approach originating in the United States. These resources have been adapted by SAICS for use in the Saskatchewan context, as the Ministry of Education had determined that the A.C.E. curriculum and materials were not in alignment with, or comparable to, the Saskatchewan curriculum.

In the SAICS system, students primarily work through what are known as P.A.C.E. booklets – or Packets of Accelerated Christian Education. As discussed earlier, this is referred to as the “self-mastery approach.” Content is provided within these workbooks, sometimes with direction to students to consult other resources such as textbooks, and students are then required to fill in blanks to demonstrate what they have learned. They then self-correct their work, conduct a review, and write a test. There are typically 12 P.A.C.E.s in each core subject. Student progress is assessed based on the number of P.A.C.E. booklets completed. Direct teaching is done occasionally. One Qualified Independent School describes this approach as “intended to promote responsibility, self-discipline, and good study habits.”

Upon applying to become Qualified Independent Schools when the category was created in 2012, the SAICS schools collectively submitted their teaching materials (i.e. workbooks, textbooks, course outlines, etc.) to the Ministry of Education. Due to the volume of material provided, the Ministry granted these schools probationary approval for funding as Qualified Independent Schools while this information was assessed. The Ministry contracted a consultant to conduct this review. The process took approximately two years, concluding in 2014.

Some SAICS courses were approved with no revision required. Others required significant amendment to meet the provincial curriculum outcomes. SAICS made changes and these courses were submitted again for re-evaluation. Although approval was ultimately recommended by the consultant, in many cases it was recommended that further actions be taken. For example, the consultant indicated that some course outlines still required adjustment to meet all curriculum outcomes, that teachers ought to use a range of instructional approaches in addition to the self-mastery workbooks/P.A.C.E.s, that students should be engaged in more hands-on activities, and that Ministry-recommended resources be used in addition to the SAICS resources. On the understanding these actions would be taken, the review was concluded.¹³⁴

Our investigation found, however, that Ministry staff and official trustees in 2022-23 continued to share the concerns raised in the 2012-2014 review regarding the heavy reliance on rote memorization and learning within the SAICS instructional model. It was reported to the Advocate that this approach was not likely to meet curriculum objectives related to comprehension, critical thinking, analysis, and creativity. This may indicate that the final recommendations of the consultant may not have been fully implemented.

¹³⁴ Document provided by the Saskatchewan Ministry of Education – “Summary of SAICS Program Review (June 2, 2014) & other documentation.”

In the Advocate's file review of one Qualified Independent School, we noted a letter written from the director to a parent upon the withdrawal of their children from the school that is of relevance to this issue. English was not the children's first language and they struggled with learning it. Yet, the director stated, "[The children] continued working on the P.A.C.E.s, scoring very highly in them. But it soon became apparent that they didn't comprehend or understand what they were studying. Students learning by rote is one of the disadvantages of the individualized system we use." Although this letter was written in 2009, our review indicates this approach is still relied upon in several schools. This director's description, while dated, appears to support current concerns in this regard.

It was reported to the Advocate that it can be difficult for Ministry staff to effectively supervise teachers when students are primarily completing P.A.C.E.s and there is no direct teaching occurring during their visit. Additionally, the Advocate heard reports of Ministry staff facing resistance to their questions on how curriculum outcomes are being met, as school administrators insisted that the previous approval made these inquiries irrelevant. We heard that several schools have come to depend solely on these resources, with the understanding that they are the curriculum. Rather, SAICS materials should be viewed by schools as resources to help meet the curriculum objectives laid out by the province. If these resources do not meet curriculum objectives, they must be supplemented.

Ministry staff and the official trustees appointed to oversee the administration of independent schools are experts in curriculum and pedagogy. Accordingly, their observations have been given significant weight in this review. In addition to the reported concerns of supervising officials, reports of the official trustees appointed to three SAICS-affiliated Qualified Independent Schools in 2022-23 all expressed varying degrees of concern with the approach and materials used, ranging from the need for "more active learning" and for material to be "updated or discarded", to noting gaps in curriculum outcomes and a lack of inquiry-based learning, to observations that student assessment was based on the number of P.A.C.E. booklets completed rather than whether students were meeting curriculum outcomes, to serious concerns that this approach could contribute – at least in relation to the overall practices of one particular school – to "potential psychological harm."

Additionally, a file review of one Qualified Independent School indicated it was ordering materials directly from Accelerated Christian Education (A.C.E.) as recently as 2019, even though the Ministry had declared the A.C.E. resources did not align with the Saskatchewan curriculum.

While these issues were not identified in past inspections and supervisions, the Advocate notes that past human resources allotted to the Independent Schools and Home-based Education Unit (ISHBE Unit) were limited and, therefore, so was its capacity to conduct in-depth assessments. The Advocate notes that the experts looking at the instruction and resources currently in use within these Qualified Independent Schools with fresh eyes consistently observed and reported gaps in the curriculum.

In addition to the earlier recommendation to address curriculum gaps within course outlines, the Advocate is hopeful the additional resources recently granted to the ISHBE

Unit will result in more attention being paid to these matters going forward. Recent supervision documents reviewed by the Advocate indicate that this work is already occurring, as supervisory officials have documented that, as of the 2022-23 academic year, they are focusing on helping schools to improve critical thinking and creativity within their lesson plans. The Advocate understands that boards and staff in several Qualified Independent Schools using this approach are open to re-evaluating their methods and their materials.

The Ministry has also advised that some SAICS-affiliated schools are moving away from the individual mastery/P.A.C.E. model and towards more direct teaching methods.

Recent amendments made to *The Registered Independent Schools Regulations* stipulate that the core learning resources of Certified Independent Schools must be approved by the Minister and “provide[d] [...] to the ministry for review at least once every five years [...]”.¹³⁵ The Ministry advises the purposes of this review will be to ensure resources continue to align with the provincial curriculum, as well as include appropriate cultural terminology.

The Advocate notes with concern that the Regulations do not place the same requirements on other categories of funded schools that are also required to adhere to provincial curriculum standards. Rather, this has been built into the Ministry’s updated Policy and Procedures Manual as an “expectation” (versus a requirement) for Qualified Independent Schools and is not mentioned for other funded categories under the purview of the Ministry, including Alternative Schools and Historical High Schools.¹³⁶ Furthermore, related policy statements for both Qualified and Certified Independent Schools in the updated Manual refer to the schools conducting their own reviews and providing proof of the review to the Ministry, rather than for the resources themselves to be provided to Ministry staff for review.¹³⁷

Since receiving funding in 2012, Qualified Independent Schools were aware of their obligation to follow provincial curriculum outcomes, yet current gaps in curriculum have been found. Accordingly, it is important that the Ministry be actively involved in the review and assessment of core resources. At minimum, it ought to meet its regulatory obligations to do so for Certified Independent Schools. The Policy Manual ought to accurately reflect this obligation and require Certified Independent Schools to provide core resources to the Ministry for review, rather than require the school to conduct its own review. It is the view of the Advocate that this requirement ought to be incorporated in regulation to all funded categories of independent schools under the Ministry’s purview. Embedding this requirement into regulation will also provide stronger safeguards to ensure the ISHBE Unit can maintain the human and other resources required to conduct this significant work.

“ From my perspective, is that [the SAICS system] does a pretty good job, but it doesn’t cover all the outcomes of the curriculum. So that’s where we’ve asked teachers to kind of flip their thinking. The curriculum drives your work, not the P.A.C.E.s. [...] Your job is to look at that curriculum to ensure that P.A.C.E.s are covering it. So, to their credit, they’ve kind of rolled up their sleeves this year and said, ‘Okay, what is and what isn’t?’ And they are addressing the gaps and having to do some direct instruction, whereas normally it was, like, this independent work. ”

– OFFICIAL TRUSTEE

¹³⁵ The Registered Independent Schools Regulations (subsection 11.1(d))

¹³⁶ Oversight of Associate Schools is conducted by school divisions, rather than the Ministry of Education.

¹³⁷ The Registered Independent Schools Policy and Procedures Manual. (2023). Section 1.2 Registration of Qualified Independent Schools & Section 1.3 Registration of Certified Independent Schools

RECOMMENDATION #20

The Ministry of Education amend The Registered Independent Schools Policy and Procedures Manual to accurately reflect the regulatory onus on Certified Independent Schools to “provide[...] the core learning resources [...] to the ministry for review at least once every five years or otherwise on the written request of the minister [...].”

RECOMMENDATION #21

The Government of Saskatchewan amend *The Registered Independent Schools Regulations* and The Registered Independent Schools Policy and Procedures Manual to require the core learning resources of Qualified Independent Schools, Alternative Schools, and Historical High Schools to be approved by the Minister of Education and be provided to the Ministry for review at least once every five years or otherwise on the written request of the Minister.

Materials and Resources Used

Section 4.4 of The Registered Independent Schools Policy and Procedures Manual informs all independent schools that the Ministry of Education “develops and maintains annotated lists of recommended learning resources to support provincial curriculum.” All categories of independent schools have access to and could choose to utilize resources from this list, but are not required to do so.

As in the provincial system, independent school administrators and teachers have the option to select their own resources and materials provided they facilitate student achievement of curriculum outcomes.¹³⁸ Resources chosen by individual teachers – in either system – are not systematically monitored by either a school division or the Ministry of Education.

Concerns have been raised in the public discourse that resources and materials used by some Qualified Independent Schools contain content that may be discriminatory or present information that does not align with expectations of instruction in the provincial system.

For the purposes of this investigation, the Advocate reviewed a sample of resources currently used in several Qualified Independent Schools, however, a comprehensive review of these resources was not within the scope of this investigation. It is the view of the Advocate that the onus to do this is on the Ministry of Education.

Many public concerns have primarily revolved around instruction in science and differences between worldviews related to the creation and/or evolution of the earth and its organisms.

¹³⁸ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 4.4 – Recommended Learning Resources. p. 52

Our office reviewed select P.A.C.E. booklets utilized in several SAICS-affiliated Qualified Independent Schools and was satisfied – for our purposes – that these resources appear to balance the freedom of independent schools to provide instruction “from a particular religious or philosophical perspective” with the general objectives of the provincial curriculum to expose students to the existence of alternative perspectives and prepare them for what to expect when interacting with broader society.

Whether this content and the manner in which it is delivered to students continues to align with the Goals of Education for Saskatchewan and fully achieves all curriculum objectives for the purpose of provincial funding is for the Ministry of Education to determine. Accordingly, the Advocate is encouraged by the Ministry’s commitment to regular reviews of core resources used in Qualified and Certified Independent Schools to ensure curriculum standards are continually met. We reiterate, however, our recommendation that the onus for reviewing core resources must clearly fall on the Ministry, rather than on the schools themselves, and ought to also include other funded categories of independent schools.

Furthermore, our review of select resources did not find overtly discriminatory material. We did, however, note more subtle references related to body diversity and the disability community that could have a negative impact on students’ perspectives of themselves and others. We also make observations and recommendations related to references to Indigenous content and sexual orientation in Sections 7.6.2.4 and 7.7.2. We took note of concerns in the public discourse regarding potentially discriminatory references to gender roles however we did not observe this in our sample review. We did hear that effort is made by schools to “cross[...] out some of the worst lines.” Official trustees tasked with reviewing resources also reported not having come across overtly discriminatory material. However, when taken together with the observations of these same experts that certain resources were “dated and need to be updated or discarded”, a comprehensive Ministry review of the resources and materials used in the publicly funded independent schools where these concerns have been raised is clearly warranted.

Our office has not conducted a comparative review of resources used within provincial schools. We acknowledge there may also be outdated resources utilized in that system as well. Nonetheless, the Advocate asserts that all educational systems would benefit from regular review to ensure resources used to teach children and youth respect the inherent dignity of all individuals.

We note that concerns with the quality of education or teaching practices in Qualified Independent Schools are not limited to those that are religiously-based. The Ministry of Education received two concerns in 2022, in part, regarding the quality of education provided by a non religiously-based Qualified Independent School. The Ministry reported that it did not specifically investigate these concerns. The rationale provided to our office was that the school followed Saskatchewan curriculum and had Professional A teachers, as observed during previous Ministry supervision visits. Again, the Advocate is hopeful increased resources in the Independent Schools and Home-based Education Unit will allow Ministry staff more time to become familiar with the level of instruction provided in all Qualified Independent Schools and more time to support any teachers who may require it.

As the learning outputs (discussed below) reviewed by the Advocate suggest the basic academic skills expected of students are being achieved at rates not dissimilar to those of the rest of the province, our office will refrain from recommending a more urgent review of resources pertaining to curriculum compliance other than the five-year rolling review already being planned. However, it is the opinion of the Advocate that there is a more pressing need to update resources found to be outdated or in need of replacement to ensure their content does not offend the dignity of students on the basis of any prohibited grounds in *The Saskatchewan Human Rights Code, 2018*, or the principles of reconciliation.

This view aligns with direction provided by the Committee on the Rights of the Child, which stated that:

The effective promotion of article 29 (1) requires the fundamental reworking of curricula to include the various aims of education and the systematic revision of textbooks and other teaching materials and technologies, as well as school policies. [...] Pre-service and in-service training schemes which promote the principles reflected in article 29 (1) are thus essential for teachers, educational administrators and others involved in child education.¹³⁹

RECOMMENDATION #22

The Ministry of Education collaborate with registered independent schools to develop a plan to immediately update all outdated resources to ensure content does not offend the dignity of students on the basis of any prohibited grounds under *The Saskatchewan Human Rights Code, 2018*, or principles of reconciliation.

Indigenous Content and Reconciliation

One of the principles of reconciliation as put forward by the Truth and Reconciliation Commission of Canada (TRC) is the need for “constructive action addressing the ongoing legacies of colonialism that have had destructive impacts on Aboriginal peoples education, cultures and languages, health, child welfare, the administration of justice, and economic opportunities and prosperity.”¹⁴⁰ This action necessitates the incorporation of Indigenous content and Treaty Education into our education system. The Government of Saskatchewan has committed to this goal.¹⁴¹

Treaty Education has been a mandatory part of the Saskatchewan curriculum since 2007. The intent is that First Nations and Métis content and knowledge of treaty relationships are to be integrated into a range of subject areas in each grade. In 2008, the government

¹³⁹ Committee on the Rights of the Child. (2001). *General Comment No. 1 (2001) Article 29(1): The Aims of Education*. Geneva, CH: United Nations CRC/GC/2001/1. p. 6

¹⁴⁰ Truth and Reconciliation Commission of Canada. (2015). *What We Have Learned: Principles of Truth and Reconciliation*. Winnipeg, MB: Author

¹⁴¹ Government of Saskatchewan. (2015). *Premier's Statement on the Truth and Reconciliation Commission Report*. (Retrieved from: <https://www.saskatchewan.ca/government/news-and-media/2015/june/05/commission-report>)

introduced resources to facilitate this instruction.¹⁴² The Ministry also created an online educational toolkit entitled, "Supporting Reconciliation in Saskatchewan Schools", including resources to be used in classrooms and for professional development of staff. Saskatchewan has continued to work towards making more resources on Indigenous ways of knowing, content, and perspectives available to schools, including independent schools.¹⁴³ Supporting action toward reconciliation in education is a key strategy in the Ministry of Education's 2023-24 Business Plan.¹⁴⁴

The Ministry reports that it provided Treaty Education Kits and training to Qualified Independent Schools in 2012. The Ministry's expectation is that this information is being taught and related curriculum outcomes are being achieved. The Ministry stated it would expect to see Treaty Education outcomes reflected in course outlines/year-at-a-glance documents provided by Qualified Independent Schools as part of regular supervision. As previously discussed, the expectation on Ministry staff supervising Qualified Independent Schools would be to go through each course outline and, if outcomes were missing, to provide feedback to each teacher to ensure those outcomes are achieved.

Despite this expectation, only one school in the sample reviewed by our office included Treaty Education outcomes in its course outlines. Previous supervision documentation did not indicate that this was identified or addressed with teachers.

When asked about this omission, a Ministry official advised it was due to the historically limited size of the Independent Schools and Home-based Education Unit. Staff did not have the capacity to focus on everything. Following the initial roll out of and training on the Treaty Education kits, this had yet to be a focus area as Ministry staff were required to concentrate on other provincially mandated priorities, such as reading and writing levels.

The Advocate notes that schools in the provincial system have historically experienced similar challenges in this regard.¹⁴⁵

In response to our questions on this topic, the Ministry advised the Advocate that Treaty Education will now be a focus area to be worked on with Qualified and Certified Independent Schools.

The Advocate was encouraged to observe that curriculum outcomes related to other elements of Indigenous content were listed in the majority of course outlines reviewed for English Language Arts (ELA) and Social Sciences across various grade levels, and there was indication that some teachers engaged in available professional development sessions on the TRC. Additionally, although Alternative Schools do not submit course outlines to the Ministry, we noted through inspection documentation and website reviews that these schools place significant emphasis on Indigenous content and reconciliation.

¹⁴² Government of Saskatchewan. (15 September 2008). Moving Forward with Mandatory Treaty Education. Media Release. (Retrieved from: <https://www.saskatchewan.ca/government/news-and-media/2008/september/15/moving-forward-with-mandatory-treaty-education>)

¹⁴³ Ministry of Education. (2022). *Ministry of Education Annual Report for 2021-22*. Regina, SK: Author.

¹⁴⁴ Ministry of Education. (n.d.). *Business Plan 2023-24*. Regina, SK: Author (Retrieved from: <https://publications.saskatchewan.ca/api/v1/products/120477/formats/139300/download>)

¹⁴⁵ Cowan, M. "What Does Treaty Education Look like in Saskatchewan?" *CBC News*. November 18, 2017. (Retrieved from: <https://www.cbc.ca/news/canada/saskatchewan/saskatchewan-treaty-education-1.4408398>)

However, our office's review of some educational materials recently or currently in use in several Qualified Independent Schools found lessons which included language that does not reflect the principles of reconciliation. For instance, a Grade 4 grammar resource asked students to identify the use of nouns using the story of a missionary who "had a burden for the salvation of the native Americans" without context around the destructive impacts of colonialism, as emphasized as necessary by the TRC.

Additionally, Ministry officials reported finding a social sciences resource currently in use by at least one school that had been pulled by the Ministry years earlier for having problematic language around Indigenous history, and another that needed to be "reviewed and edited to current practice." This information indicates that a careful review of all resources currently in use by registered independent schools, and in particular those that receive public funding, is warranted. Accordingly, the Advocate urges the Ministry to include these considerations in its forthcoming focus on Treaty Education, as well as within any review of core learning resources conducted in response to the recommendation made earlier in this report.

We also note that The Registered Independent Schools Policy and Procedures Manual could benefit from updates to ensure the principles of reconciliation are consistently taught within *all* independent schools. The only reference to Indigenous content in the Manual is found in **Section 5.7 Registered Independent Schools: Students with Intensive Needs – Curriculum and Instruction**, where it states:

The Ministry of Education encourages registered independent schools to incorporate, in an appropriate manner, the ministry's supporting initiatives with curriculum, such as:

- gender equity;
- First Nations and Métis ways of knowing, content, and perspectives;
- resource-based learning; and,
- a needs-based model.

These supporting initiatives may be approached from a particular religious or philosophical perspective in conformity with the school's approved goals of education.¹⁴⁶

While this reference is positive, the issue lies in its placement within the Manual. Section 5.7 of the Manual is specifically for application in Alternative Schools, which is a category of registered independent schools established for the express purpose of providing alternative educational environments for children and youth who are either wards of the province or who require a modified program to accommodate intensive needs or social risk factors. The Manual ought to reflect the importance of and, indeed, the requirement for its incorporation into the curriculum of *all* categories of registered independent schools.

¹⁴⁶ The Registered Independent Schools Policy and Procedure Manual. (2019). Section 5.7 – Registered Independent Schools: Students with Intensive Needs – Curriculum and Instruction. p. 77

The Advocate recognizes the scarce resources historically afforded to the Ministry's Independent Schools and Home-Based Education Unit (ISHBE) and, therefore, its limited capacity to pursue all facets of curriculum and pedagogy, including the achievement of Treaty Education outcomes. The fact that similar struggles exist within the provincial system is also acknowledged. However, further to the TRC Calls to Action, it is incumbent upon the Ministry of Education to make this one of its highest priorities.

The Advocate is optimistic that the additional human resources granted to the ISHBE Unit over the past year will help to make progress on this important goal.

TRUTH AND RECONCILIATION COMMISSION CALLS TO ACTION

EDUCATION FOR RECONCILIATION

62. We call upon the federal, provincial, and territorial governments, in consultation and collaboration with Survivors, Aboriginal peoples, and educators, to:
- i. Make age-appropriate curriculum on residential schools, Treaties, and Aboriginal peoples' historical and contemporary contributions to Canada a mandatory education requirement for Kindergarten to Grade Twelve students.
63. We call upon the Council of Ministers of Education, Canada to maintain an annual commitment to Aboriginal education issues, including: conditions, including the hours and manner of inspection, under which the access mentioned in subsection (4) is to be granted.
- i. Developing and implementing Kindergarten to Grade Twelve curriculum and learning resources on Aboriginal peoples in Canadian history, and the history and legacy of residential schools.
 - ii. Sharing information and best practices on teaching curriculum related to residential schools and Aboriginal history.
 - iii. Building student capacity for intercultural understanding, empathy, and mutual respect.
 - iv. Identifying teacher-training needs relating to the above.
64. We call upon all levels of government that provide public funds to denominational schools to require such schools to provide an education on comparative religious studies, which must include a segment on Aboriginal spiritual beliefs and practices developed in collaboration with Aboriginal Elders.



RECOMMENDATION #23

The Ministry of Education amend The Registered Independent Schools Policy and Procedures Manual to clearly identify the obligation on all categories of registered independent schools to incorporate First Nations and Métis content and perspectives into curriculum.

RECOMMENDATION #24

The Ministry of Education's Independent Schools and Home-Based Education Unit support all categories of independent schools, with a priority on those that receive public funding, to incorporate Treaty Education Outcomes and First Nations and Métis content and perspectives into instruction in all subjects at all grade levels.

7.6.3 Learning Outputs

Independent schools are to provide a "quality of education comparable to that of public schools." When considering this matter in 1990, the Minister's Advisory Board stated that "the product of one system should be recognizable to the other", meaning that "[g]raduates of the two systems should possess a similar level of academic proficiency."¹⁴⁷ These requirements apply to all categories of independent schools.

Independent schools offering secondary level credits (including unfunded schools) and those receiving public funding have the additional onus to follow the provincial core curriculum and, therefore, meet the curriculum objectives identified therein.

The Advocate recognizes that there are many perspectives on the usefulness of standardized test scores in assessing the quality of education. Our office is aware of both the limitations and advantages that come with this approach. Nonetheless, in order to come to an objective understanding of the "academic proficiency" and "learning output" achieved in independent schools in relation to the provincial education system, we had to rely primarily upon numerical data available to the Ministry of Education in this regard.

We approached this data with a view to whether the nature and content of information collected by the Ministry is sufficient to discharge its duty to ensure children and youth in registered independent schools are receiving a quality education.

The Advocate noted some discrepancies and irregularities in the data available from the Ministry. These were explained as being the result of data entry error by Ministry staff or late submissions from independent schools. The Independent Schools and Home-based

¹⁴⁷ Minister's Advisory Board on Independent Education. (1990). *Final Report to the Minister of Education Volume 1*. Saskatoon, SK: Author. pp. 46

Education Unit has no formal policies or procedures in place governing the collection, entry, storage and tracking of data related to learning outputs and assessments.

While these circumstances make it difficult to have full confidence in the data provided, the available information can provide an overall snapshot of the learning output within independent schools and is, thus, relied upon here. We do acknowledge that the Ministry's updated Policy and Procedures Manual now defines missing or late submissions of data as an example of violations that may lead to a school being placed on probation further to the amended Regulations.¹⁴⁸ Clarifying this expectation for schools is positive.

Nevertheless, considering the significant onus on the Ministry to ensure that registered independent schools provide students with a comparable education and similar level of academic efficiency to those in the provincial system, it is critical that the Ministry have systematic and consistent processes regarding the collection, entry, storage and tracking of data.

RECOMMENDATION #25

The Ministry of Education review its processes of collection, entry, storage and tracking of data from registered independent schools on learning outputs, make improvements to ensure the accuracy of data in Ministry records and develop policy and procedures on these processes.

General Processes of Student Assessment

As in provincial schools, registered independent school principals and teachers have the responsibility for evaluating the academic achievement of students from Kindergarten to Grade 11. Independent schools can establish their own procedures and standards for evaluating the progress of students and are required by provincial policy to keep records of student progress.¹⁴⁹

At the Grade 12 level, there are two assessment processes used in both provincial and independent schools depending on the qualifications of the teacher. If teachers are accredited (see text box on next page), they are responsible for administering tests and determining the final mark or standing of the students. In courses taught by non-accredited teachers, the teacher determines 60% of the students' mark and the students participate in a provincial exam which determines the remaining 40%.¹⁵⁰ Provincial exams are standardized and based on the Saskatchewan curriculum.

¹⁴⁸ Registered Independent Schools Policy and Procedures Manual. (2023). Section 2.10 Probation, Suspension and/or Cancellation of a Registered Independent School, Qualified Independent School, and Certified Independent School Certificate

¹⁴⁹ The Registered Independent Schools Policy and Procedures Manual. (2019). Section 4.6 – Student Evaluation: Elementary and Middle Levels & Section 4.7 – Student Evaluation: Secondary Level Credits

¹⁵⁰ The courses in which provincial exams are administered include English Language Arts A30; English Language Arts B30; Biology 30; Chemistry 30; Physics 30; Workplace and Apprenticeship Mathematics 30; Foundation of Mathematics 30; and Pre-Calculus 30. (<https://www.saskatchewan.ca/residents/education-and-learning/departamental-exams>)

Teacher Accreditation

To be eligible for accreditation, teachers must:

- hold a permanent Professional A Certificate,
- have a minimum of two years teaching experience in Saskatchewan,
- complete 24 university credit hours in a combination of the subject in which accreditation is sought, and instructional methods in that subject area OR a minimum of five years teaching in the subject area, and
- attend an STF Accreditation Seminar.

Teachers must renew their accreditation in each subject area every five years through participation in a professional development activity in that subject.

– (Ministry of Education Accreditation Policy 2022)

These same requirements apply to provincial schools and any category of registered independent school (whether funded or not) that offers Grade 12 level credit courses. Therefore, the ability of students to succeed on these exams can be used as an indicator that the provincial curriculum is being taught in a comparable manner.

All independent schools offering secondary level credits – including those that are unfunded – enter student marks in Grades 10, 11, and 12 level courses into the provincial Student Data System (SDS) for the purpose of assigning credits. Marks are entered into the SDS directly by teachers in both the independent and provincial school systems and are available for review by the Ministry of Education. In this regard, the Ministry can also monitor credit attainment and graduation rates.

In summary, the data collected on learning output in secondary level courses is the same within provincial and independent schools. However, the data collected by the Ministry for students in Kindergarten to Grade 11 differs depending on whether the independent school receives public funding.

Assessment of Learning Output in Unfunded Registered Independent Schools

Unfunded registered independent schools are not required to participate in provincially mandated student assessments from Kindergarten to Grade 11, nor are they required to submit any student assessment data to the Ministry of Education for elementary and middle level grades. These schools can voluntarily choose to administer other national or international standardized tests to determine learning output for their own purposes.¹⁵¹ However, these assessments are not provincially mandated, therefore, the Ministry does not collect information in this regard. Most unfunded independent schools do not offer courses past Grade 9, meaning that no marks are submitted to the Ministry for the purpose of providing secondary level credits. Therefore, the Ministry gathers no data to objectively assess academic proficiency or learning output of students in the majority of unfunded independent schools.

The Ministry's ability to assess the quality of education provided in the elementary and middle levels of unfunded independent schools relies upon the observations of supervisory officials during annual inspections. Again, these inspections occur once a

¹⁵¹ Such as the Pan Canadian Assessment Program (PCAP), Programme for International Student Assessment (PISA), Progress in International Reading Literacy Study (PIRLS), Canadian Achievement Test (CAT) and/or Canadian Test of Basic Skills (CTBS).

year for approximately one to two hours. Ministry staff have several responsibilities during these brief inspections, including meeting with school staff and leadership, verifying the physical safety of the school building, determining whether instruction is given in the seven required areas of study, confirming whether the school has a process for evaluating students, and trying to engage with students. We heard there is not a way to assess what children are learning objectively or systematically or determine the quality of education provided in these grade levels. However, we also heard, “at the end of the day, I would leave with a feeling that those students were getting a decent education.”

“ [A]t the end of the day, I would leave with a feeling that those students were getting a decent education. ”

– MINISTRY STAFF

The Ministry only collects assessment data for unfunded schools if they offer secondary level credits, as marks are required to be submitted for the purpose of credit attainment. In the last five years, only three unfunded independent schools have offered secondary level credit courses. Only one of these remains in operation.

In order for secondary level credits to be provided, the course must follow the Saskatchewan curriculum and be taught by a certified teacher (of any type) that is under the supervision of the Ministry. These are helpful safeguards.

The Ministry of Education provided our office with data drawn from the provincial Student Data System for the past five years.¹⁵² In years where Grade 12 students in unfunded independent schools participated in provincial exams, their average marks were 6.4% to 1.2% lower than the total Saskatchewan population. In the years where marks were determined entirely by the teacher, the average marks of students in unfunded independent schools were 3.4% to 11.3% higher than the total Saskatchewan student population.^{153,154}

Data on three-year graduation rates in unfunded schools (i.e. rate of students who graduated high school within three years) was only available for one year during this period (2017-18). In that year, based on five eligible students, unfunded registered independent schools had a three-year graduation rate of 60%, as compared to the total provincial rate of 77.3%. However, a five-year graduation rate was provided for unfunded independent schools in 2018-19 at 100% (based on four eligible students) and in 2019-20 of 60% (based on five eligible students), as compared to 84.7% and 85.5% in the total Saskatchewan population.

We note that the results of provincial exams and three-year graduation rates are somewhat lower in unfunded independent schools than the total Saskatchewan student population. However, the low numbers of students enrolled in secondary level credit courses in unfunded schools make meaningful statistical analysis difficult.

¹⁵² In addition to marks achieved on Grade 12 provincial exams, the Ministry provided data on average marks for Grades 10, 11 and 12 Language Arts and Grade 12 Mathematics. However, only one unfunded independent school had over five students for whom data was available.

¹⁵³ Data provided by the Ministry of Education titled, “Indep Sch Outcome Results” at tab “ProvlExms.”

¹⁵⁴ Due to the pandemic, in 2019-20 and 2020-21 the Ministry implemented temporary policies to suspend or significantly reduce the use of provincial departmental exams. In these years, marks were determined almost solely by teachers.

Nonetheless, the Advocate notes that, in collecting information on average marks in secondary level credit courses (including those credits subject to provincial exams), levels of credit attainment and graduation rates, the Ministry of Education gathers sufficient information to adequately monitor the learning output of secondary level education in unfunded independent schools. On this basis, the Advocate is not making a recommendation specific to monitoring learning output in unfunded secondary level independent schooling.

However, most of the 457 students enrolled in unfunded registered independent schools in 2022-23 were in Kindergarten to Grade 9.¹⁵⁵ There is currently no way for the Ministry of Education to objectively measure the quality of education received by the majority of these students. As the Ministry has a duty to ensure all children and youth in Saskatchewan receive a quality education, including these students in provincially mandated assessments in reading, writing and math would provide this opportunity.

Students in unfunded independent schools in Quebec and certain categories of unfunded schools in British Columbia must participate in provincial assessments. Unfunded schools in New Brunswick are invited to do so, while unfunded schools in Nova Scotia may be required to show evidence of reasonable student progress based on the results of standardized tests. Unfunded schools in Newfoundland are required to participate in provincial assessments if offering provincial curriculum.¹⁵⁶

The Saskatchewan Minister of Education has the authority to require participation in these assessments under section 5 of *The Registered Independent Schools Regulations*, which authorizes the implementation of “any terms and conditions the minister considers advisable” on the certificate of registration for an independent school, provided there is appropriate consideration of the “freedom of conscience and religion in education” and “fundamental justice.” It is the view of the Advocate that assessing academic proficiency in these subjects does not encroach on religious beliefs or value systems and, therefore, would not amount to an unreasonable infringement on the religious rights of religiously-based independent schools.

RECOMMENDATION #26

The Ministry of Education include all Kindergarten to Grade 9 students in unfunded registered independent schools in all provincially mandated assessments in reading, writing and math. The Ministry ought to provide the necessary tools and training to school staff and administration to facilitate this participation.

¹⁵⁵ Enrollment data provided by the Ministry of Education

¹⁵⁶ Van Pelt, D., Hasan, S., and Allison, D.J. (2017). *The Funding and Regulation of Independent Schools in Canada*. Vancouver, BC: Fraser Institute (Retrieved from: <https://www.fraserinstitute.org/sites/default/files/funding-and-regulation-of-independent-schools-in-canada.pdf>)

Assessment of Learning Output in Funded Registered Independent Schools

Qualified Independent Schools, Certified Independent Schools and Associate Schools that receive public funding are required to participate in all large scale provincially mandated assessments.^{157,158} These take place in elementary and middle grade levels and have primarily included reading assessments conducted in Grades 1, 2 and 3.

Writing assessments in Grades 4, 7 and 9, and math assessments in Grades 2, 5, and 8 were in the process of being introduced prior to the COVID-19 pandemic. All assessments were paused during the pandemic therefore, no data is available for 2019-20. Reading assessments resumed in 2020-21, but at the time of this report's release, writing and math had not yet been introduced and/or reinstated.

In practice, provincially mandated assessments are implemented in Qualified Independent Schools (and now Certified Independent Schools) the year after rollout in the provincial system. The Ministry reports this is because there are not enough staff with expertise to train and support all schools in the use of these tools at the same time.

Writing assessments were first implemented in provincial schools in 2017-18 and, therefore, in independent schools in 2018-19. Math assessments were still in development and have not yet been utilized in Qualified Independent Schools. As a result of the interruption caused by the pandemic, there is currently only one year of writing assessment data available for independent schools.

In both the provincial and the independent school systems, individual teachers evaluate the students' results by assessing them against a standard rubric and submit this data to the Ministry. Again, funded schools may also choose to administer other national or international standardized tests, but the Ministry does not collect this information. With respect to secondary level courses, the same information as described above for unfunded independent schools is collected, inclusive of marks, credit attainment and graduation rates.

¹⁵⁷ To do so, the Ministry relies upon section 10.1(1)(h) of *The Registered Independent Schools Regulations* (formerly section 10(1)(h)) which requires Qualified Independent Schools to prepare any reports and returns concerning statistical data, budgetary information and the operation of the registered independent school that may be required from time to time by the minister.

¹⁵⁸ Historical High Schools and Alternative schools do not participate in these assessments. Historical High Schools offer only Grades 9 through 12, therefore, (largely) do not serve elementary and middle grade students that are captured by these assessments. The population of Alternative Schools is itinerant and temporary, as they are primarily located in group homes to serve young people who are wards of the province. The one Alternative School that serves a more stationary population of children in the community only offers Grades 7 through 10 and, therefore, the efficacy of its services would not be captured by these assessments.

The Advocate reviewed all available data that allowed for comparison of the academic achievement of students in funded independent schools and against that of the province as a whole, with a focus on the following metrics:

- Grade 3 reading levels - considered a leading indicator of future student performance
- Grade 9 writing levels - provides an understanding of student standing going into high school
- Average credit attainment – provides an indicator of frequency of success across all secondary grades (Grades 10, 11, 12)
- Average department exam scaled mark – reflects Grade 12 courses in which students participated in a standardized provincial exam comprising 40% of their final mark
- 3-Year graduation rates – offers insight into the overall success of the educational program

Collectively, this data offered a snapshot of academic achievement across the span of elementary, middle, and secondary grade levels, indicating that the learning output from funded categories of independent schools is not substantially different from the total Saskatchewan student population. There were instances in which outputs were somewhat lower, and some that were higher than provincial totals. To ensure increased transparency and accountability, and to allow parents and students to make the most informed choice when choosing an educational experience, the Ministry of Education ought to disaggregate this data in its public reports.

There have been concerns raised and debated in the public discourse that overall achievement in independent schools could be bolstered if independent schools decline admission to students with intensive needs. However, to date, our office has not received concerns specific to denials of admission. The Ministry reports also being unaware of any such instances. Any potential impact this could have on overall achievement in independent schools can not be assessed on the basis of available data. Admission policies will be addressed in subsequent sections of this report.

RECOMMENDATION #27

The Ministry of Education include disaggregated data on the learning output (i.e. results of provincial assessments and graduation rates) of all categories of registered independent schools in its Annual Report, at minimum, providing overall averages at three-year intervals.

7.7 THE RIGHT TO NON-DISCRIMINATION

The *Saskatchewan Human Rights Code, 2018* prohibits discrimination within education – including within independent schools – on the basis of any prohibited ground other than age. These grounds include religion, creed, marital status, family status, sex, sexual orientation, disability, colour, ancestry, nationality, place of origin, race or perceived race, receipt of public assistance and gender identity.¹⁵⁹ Again, this is qualified by permitting restrictive enrolment policies – in certain circumstances – on the basis of sex, creed, religion, or disability.

As our scope was focused on processes of Ministry oversight, it did not lead to explorations of whether there are current examples of individual discrimination taking place. Rather, we focused on mechanisms of Ministry oversight to ensure non-discrimination within independent schools.

As discussed in Section 6.2 of this report, there is ambiguity in the wording of *The Saskatchewan Human Rights Code, 2018* (the Code) and *The Registered Independent Schools Regulations* (the Regulations) in this regard. For our current purposes, we will focus our discussion on the Regulations, although potential revisions to the Code may need to be explored. Section 36 of the Regulations states:

36 The board of a registered independent school may follow a restrictive policy with respect to enrolment on the basis of sex, creed, religion, disability or educational philosophy if the registered independent school:

- (a) enrolls pupils of a particular sex, creed, religion or educational philosophy, exclusively;
- (b) in the case of religion:
 - (i) is operated by a religious order or society, including a qualified independent school or certified independent school that is operated by a religious order or society that has a membership interest in or otherwise has a connection with the qualified independent school or certified independent school; and
 - (ii) has, as its primary objective, the advancement of education from a religiously-based philosophical perspective; or
- (c) enrolls pupils who have a disability.

“ Discrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities. While denying a child’s access to educational opportunities is primarily a matter which relates to article 28 of the Convention, there are many ways in which failure to comply with the principles contained in article 29 (1) can have a similar effect. To take an extreme example, gender discrimination can be reinforced by practices such as a curriculum which is inconsistent with the principles of gender equality, by arrangements which limit the benefits girls can obtain from the educational opportunities offered, and by unsafe or unfriendly environments which discourage girls’ participation. Discrimination against children with disabilities is also pervasive in many formal educational systems and in a great many informal educational settings [...]. ”

– Source: United Nations Committee on the Rights of the Child. (2001). General Comment No. 1 (2001) Article 29(1): The Aims of Education. CH: United Nations. CRC/GC/2001/1. para. 10

¹⁵⁹ *The Saskatchewan Human Rights Code, 2018* (subsection 13(1))

As written, its text is ambiguous in that it could imply, for instance, that a school established for the express purpose of admitting students of one sex could also restrict the enrolment of a student on the basis of disability, or that a school established for the express purpose of serving students with learning disabilities could restrict enrolment on the basis of religion. It is our understanding that this is not the intent or interpretation of either the Code or the Regulations, nor would such action be supported by human rights case law. Nonetheless, for greater certainty, this section of *The Registered Independent Schools Regulations* should be amended to clearly indicate that the ability of independent schools to restrict enrolment is limited to only those listed grounds for which its establishment was intended.

In our file reviews of select Qualified Independent Schools, we found that steps are taken to prevent discrimination among students on the basis of several prohibited grounds under *The Saskatchewan Human Rights Code, 2018*. For example, some schools have non-discrimination policies outlined in their student/parent handbooks and/or admission documentation. Many have specific statements prohibiting harassment and bullying. We observed that the Ministry of Education forwards anti-bullying resources to Qualified Independent Schools in the same way it does to schools in the provincial system. We also noted evidence that Qualified Independent School administrators intervened when concerns of potential discrimination on the basis of race or perceived race arose between students. This is all very positive.

However, the Advocate also notes that the non-discrimination language used by some religiously-based Qualified Independent Schools is specific to “race, color, nationality and/or ethnic origin” and omits the prohibited grounds of religion, creed, gender, disability, sexual orientation, and gender identity. While we saw some non-discrimination statements where gender was included, these were specific to admission, rather than to all activities or educational policies. Acknowledging educational institutions operated by a religious order or society have the ability to restrict enrolment on the basis of religion and creed, this exemption does not permit schools to otherwise discriminate against children and youth on this basis.

The Advocate recalls our earlier discussion on Goals of Education in which it was noted that references to “the recognition that people differ in their values, behaviours and lifestyles” and “[in]teract and feel comfortable with others who are different in race, religion, status or personal attributes” were often omitted. This being said, as also discussed above, there are instances in which the Goals of Education or student/parent handbooks contain general references to promoting “love for one another” or “for all humanity”, as well as “respect for all people.” For their part, unfunded schools would often use language such as committing to “recognize the inherent worth and value of each individual.”

RECOMMENDATION #28

The Ministry of Education amend The Registered Independent Schools Policy and Procedures Manual to emphasize the responsibility of independent schools to comply with *The Saskatchewan Human Rights Code, 2018*.

RECOMMENDATION #29

The Government of Saskatchewan amend section 36 of *The Registered Independent Schools Regulations* to clearly state that the ability of independent schools to restrict enrolment is limited to only those listed grounds for which its establishment was intended.

7.7.1 Duty to Accommodate Students with Intensive Needs

Under section 13(1) of *The Saskatchewan Human Rights Code, 2018*, all categories of registered independent schools have the same duty to accommodate students up to the point of undue hardship as do schools within the provincial system. Undue hardship is defined as: “an unbearable financial cost or a considerable disruption to business, or an interference with the rights of others.”^{160,161}

Additionally, registered independent schools following the provincial curriculum are required to apply the principles of *The Adaptive Dimension for Saskatchewan K-12 Students* within their instructional programming.^{162,163} The Adaptive Dimension refers to “the concept of making adjustments to any or all of [...] the learning environment, instruction, assessment and resources [...] to make learning meaningful and appropriate to support student achievement.”¹⁶⁴

Despite these obligations, expectations regarding the accommodation of students are not made clear under *The Registered Independent Schools Regulations*, nor the Ministry’s Registered Independent Schools Policy and Procedures Manual. Furthermore, the Ministry did not take proactive measures to ensure independent schools were aware of their duty to accommodate to the point of undue hardship.

In addition to the ambiguity discussed above, *The Registered Independent Schools Regulations* are silent on supporting students with intensive needs outside of Alternative Schools (which are established specifically for that purpose). Prior to 2018, the Minister of Education was required under regulation to “provide or arrange, at the expense of the department, for diagnostic and assessment services for special needs pupils in registered independent schools.”¹⁶⁵ This provision was removed from the Regulations in 2018. The Ministry ceased paying for this service as funded schools were already receiving dollars related to ‘supports for learning’ intended to pay for a portion of services such as this.

¹⁶⁰ Saskatchewan Human Rights Commission. *Duty to Accommodate*. (Retrieved from: <https://saskatchewanhumanrights.ca/for-employers/duty-to-accommodate/>)

¹⁶¹ The Advocate notes that, while awkwardly worded, *The Saskatchewan Human Rights Code, 2018*’s reference to restrictive enrolment on the basis of disability is intended to apply to educational institutions that are established for the specific purpose of meeting the needs of students with disabilities. It is not intended to protect a school otherwise established to discriminate against individuals with disabilities.

¹⁶² The Registered Independent Schools Regulations (sections 9(1)(a), 10.1(1)(c) and 11.1(1)(a)); The Registered Independent Schools Policy and Procedures Manual. (2019). Section 1.8 – Associate Schools

¹⁶³ Provincial curriculum policy: Core curriculum is the umbrella term for provincial curriculum policy in Saskatchewan, containing three major components: required areas of study, locally determined options and the adaptive dimension.” (in *The Registered Independent Schools Policy and Procedures Manual*. (2019). pp. 13-14)

¹⁶⁴ Ministry of Education. (2017). *The Adaptive Dimension for Saskatchewan K-12 Students*, Regina, SK: Author

¹⁶⁵ The Independent School Regulations (repealed) (sub-section 29(e))

The Advocate notes with some concern that this change leaves unfunded schools with no financial assistance for diagnostic and assessment services. These circumstances could potentially result in a child with intensive needs having to choose between an education based in their faith, or attendance in a provincial school where their needs could be accommodated. If it has not already done so, the Advocate urges the Ministry to re-assess its termination of funding for these services against the need to balance the right of all children to non-discrimination on the basis of disability with their right to freedom of religion and conscience. The ability to obtain a diagnostic assessment would better enable independent schools to determine whether a child's needs could be accommodated without undue hardship.

Provincial schools receive funds for 'school-based supports' and 'supports for learning' based on complex formulas.¹⁶⁶ In public and separate schools, these funds are specifically allocated to staffing consultants, professionals, and paraprofessionals, as well as purchasing technical aids to ensure all students have equal access to and can benefit from educational programming. This funding is not to be used on anything else. School divisions can spread these resources across the schools in their division as they see fit.

For funded independent schools, funds for 'school-based supports' and 'supports for learning' are included in the total percentage per student granted to them. In contrast to provincial schools, however, no portion of funding is conditional. Independent schools are not required to allocate or safeguard any funds for 'supports for learning' and can put this money towards any expenses as determined by the school. Qualified Independent Schools generally do not employ specialized staff to assist students with intensive needs. Ministry staff and official trustees have reported to the Advocate that teachers attempt to support students to the best of their ability. Further to recent policy amendments, both Qualified and Certified Independent Schools are now required to have "a qualified special education teacher on staff" to be approved to offer alternative courses for students with intensive needs.¹⁶⁷ This is positive, although the Advocate notes that various forms of accommodation may be required outside of alternative programs.

Previous and current iterations of the Ministry's Policy Manual *do indicate* that independent schools can request guidance regarding accommodation from the Ministry of Education's supervisory official through the inspection process.¹⁶⁸ The Ministry advises that this occurs on occasion. However, similar to references to the inclusion of Indigenous content discussed earlier, the policy section on supporting students with intensive needs can be read as being unique to Alternative Schools. The policy manual does not make it clear that the duty to accommodate to the point of undue hardship applies to all categories of independent schools.¹⁶⁹

¹⁶⁶ Saskatchewan Ministry of Education. (2023). *2023-24 Funding Manual Prekindergarten to Grade 12 Funding Distribution Model*. Regina, SK: Author

¹⁶⁷ The Registered Independent Schools Policy and Procedures Manual. (2023). Section 1.7 – Registration Process for Qualified Independent Schools, p. 22 & Section 1.8 – Registration Process for Certified Independent Schools, p. 25

¹⁶⁸ The Registered Independent Schools Policy and Procedures Manual. (2019 & 2023). Section 5.1 – Inspection of All Registered Independent Schools

¹⁶⁹ The Registered Independent Schools Policies and Procedures Manual. (2019). Section 5.7 – Registered Independent Schools: Students with Intensive Needs – Curriculum and Instruction

This lack of clarity is in direct opposition to the clear onus placed on public and separate schools to both assess and provide supports to students with intensive needs identified in *The Education Regulations*.¹⁷⁰

Although the scope of our review did not lead to assessments of whether individual accommodations were or were not occurring within independent schools, these gaps in Ministry oversight open the door for potential discrimination.

While some funded independent schools outlined or referenced accommodation processes, several Qualified Independent Schools make statements in either their application forms or student/parent handbooks indicating they have limited to no ability to accommodate certain special needs of students.

The Advocate emphasizes that the needs of all prospective or existing students, and the school's ability to accommodate them, must be assessed on a case-by-case basis and schools must be careful not to discourage students from applying before even having a chance to explore potential accommodation.

We also noted that some application forms requested a significant amount of medical and personal information that, in view of the Advocate, is in excess of what is required to determine whether a prospective student has a disability that requires accommodation and, if so, what type of accommodation might be required.

Pursuant to recent amendments to *The Registered Independent Schools Regulations*, the Ministry now requires all registered independent schools to develop formal admission procedures and provide them to the Ministry for review. In conducting these reviews, it is incumbent upon the Ministry to evaluate statements made regarding accommodation, as well as requests for medical and personal information, and to provide guidance to schools in this regard. The Advocate urges the Ministry to consult with the Saskatchewan Human Rights Commission in this area if it has not already done so.

Our review found evidence of Qualified Independent Schools requesting psychological or other assessments from the Ministry for existing students prior to the Ministry ceasing to fund them in 2018. However, evidence was also presented of current resistance from administration in at least one Qualified Independent School to pay for assessments required by students.

It is acknowledged that funded independent schools receive less public money than provincial schools, which may result in these schools reaching the point where the financial cost of accommodation becomes unbearable earlier than would a provincial school. For instance, without the ability to pool resources from a number of schools in a division, independent schools could not be expected to offer functional integrated programs or other such intensive supports for students with significant needs. Provincial school divisions also report facing difficulties in this regard, stating that children are waiting long periods of time for assessments and that their supports for learning budgets face deficits each year.¹⁷¹

¹⁷⁰ *The Education Regulations* (sections 48 and 50)

¹⁷¹ Langager, B. (4 May 2023). Sask. school rejecting special needs students highlights for education supports. *Global News*. (Retrieved from: <https://globalnews.ca/news/9671272/sask-schools-special-needs-students-funding/>)

There may also be an onus on parents to contribute to supports for learning in independent schools through tuition. Nonetheless, independent schools still have a legal obligation to consider each student's needs on an individual basis and to accommodate to the point of undue hardship. As public funding for supports for learning is included in the operating grants they receive, these schools must ensure this money is used to create the most inclusive learning environment possible.

Recent amendments to Regulations have the potential to increase financial transparency in this regard. Previous and current iterations of *The Registered Independent Schools Regulations* have required Qualified Independent Schools to keep full and accurate financial records and to submit annual financial statements to the Minister. With the amendments, Qualified Independent Schools are now also required to be incorporated separately from the church or other organization they are connected to. The new category of Certified Independent Schools has the added requirement to submit annual, independently audited financial statements of the non-profit corporation that owns and operates the school, including detailed salary information for all teachers and administrators. Certified Independent Schools are also required to pay Professional A teachers and administrators at least 90% of what these positions are paid in the provincial system.

During our investigation, we inquired into whether the Ministry had developed a Duty to Accommodate Policy for independent schools. There was nothing in place prior to our review. However, in response, the Ministry has now developed an Administrative Procedure titled "Accommodation of students and staff – Duty to Accommodate" that all independent schools will be required to adopt and follow. This is positive. However, all parties – including students in need of assessment and/or accommodation, families, independent schools, and the Ministry – would likely benefit from clarity in regulation and policy around who is responsible for the various elements in the accommodation process.

The Advocate notes historical concerns that have been raised in the public discourse regarding a lack of supports provided to students with disabilities in certain independent schools. Reports of an official trustee appointed to one Qualified Independent School indicated that students were historically disciplined rather than supported if they struggled to understand the material. In light of these statements, we are also encouraged by the Ministry's implementation of our suggestion to post a "Student and Parent Complaints and Grievances" procedure, along with contact information for our office as well as other oversight organizations, in a place accessible to students and families so they will be aware there is somewhere to turn if they have concerns. Any student facing these circumstances also has the ability to file a complaint with the Saskatchewan Human Rights Commission.

RECOMMENDATION #30

The Ministry of Education re-assess its termination of funding for diagnostic and assessment services against the need to balance the right of all children to non-discrimination on the basis of disability with their right to freedom of religion and conscience in education.

RECOMMENDATION #31

The Ministry of Education amend The Registered Independent Schools Policy and Procedures Manual to situate references to supporting students with intensive needs so that the onus to do so, up to the point of undue hardship, clearly applies to all categories of registered independent schools.

RECOMMENDATION #32

The Ministry of Education work with all categories of funded registered independent schools to develop policies and procedures identifying and clarifying the financial and logistic expectations and activities of all parties related to requests for assessment and/or accommodation of students with intensive needs.

RECOMMENDATION #33

The Ministry of Education work with all categories of registered independent schools to ensure only appropriate medical and personal information is collected for the purposes of determining whether prospective or existing students require accommodation for disabilities or intensive needs.

RECOMMENDATION #34

The Ministry of Education provide mandatory training to all registered independent schools on their obligations to accommodate students with intensive needs under *The Saskatchewan Human Rights Code, 2018* to the point of undue hardship.

7.7.2 Non-discrimination on the Basis of Sexual Orientation and Gender Identity

Concerns have been raised in the public discourse on whether the right of students to non-discrimination on the grounds of sexual orientation and gender identity is adequately protected in independent schools operated by religious organizations where sincerely held religious beliefs conflict with gender and sexual diversity.

We found that different religiously-based schools take different approaches. For some, it is not a requirement of admission, nor a focus of teaching. Other schools assert that they are protected under section 13(2) of *The Saskatchewan Human Rights Code, 2018* to limiting attendance to students who practice and profess their faith, inclusive of their stance on human sexuality, and have formalized expectations actively discouraging any student activity that is inconsistent with their beliefs.

Balancing competing rights is nuanced and highly contextual. When rights come into conflict, “*Charter* principles require a balance to be achieved that fully respects the importance of both sets of rights.”¹⁷²

In general, the appropriate extent of the government’s reach into this arena within independent schools has not been clearly defined by the courts. There are important reasons to protect the separation of church and State and to prevent unreasonable intrusions by government into the affairs of religion.

However, as discussed earlier in this report, one of the principles set out by the then Minister of Education to guide the Final Report of the Minister’s Advisory Board on Independent Schools released in 1990 directed that “[i]ndependent schools must not promote values which conflict with the rights, freedoms and moral principles on which our society is based.”¹⁷³

This principle remains important today. But its interpretation must evolve as human rights law does. At that time, the rights of individuals in Saskatchewan did not legally include protection from discrimination on the grounds of sexual orientation or gender identity. Sexual orientation was added to *The Saskatchewan Human Rights Code, 2018* as a prohibited ground of discrimination in 1993. Gender identity was added in 2014.^{174, 175}

As a result, the right of all individuals to non-discrimination on these grounds now forms part of the “rights, freedoms and moral principles on which our society is based.” On this basis, combined with what we now know about the risks to the mental health and physical safety of gender and sexually diverse youth who are not supported to express their

¹⁷² Dagenais v. Canadian Broadcasting Corp., 1994 CanLII 39 (SCC), [1994] 3 SCR 835, (<https://canlii.ca/t/1frnq>) p. 877

¹⁷³ Minister’s Advisory Board on Independent Schools. (1990). *Final Report to the Minister of Education*. Saskatoon, SK: Author. Pg. 3

¹⁷⁴ Saskatchewan Human Rights Commission. (2017). *70th Anniversary of the Saskatchewan Bill of Rights Act*. Saskatoon, SK: Author (Retrieved from: <https://saskatchewanhumanrights.ca/70th-anniversary-of-the-saskatchewan-bill-of-rights-act/#:::text=In%201989%2C%20mental%20disabilities%20were,identity%20became%20a%20prohibited%20ground.>)

¹⁷⁵ Case law had read in these grounds of discrimination prior to their official inclusion within legislation.

authentic selves,^{176,177} it is the view of the Advocate that clear obligations on all independent schools to respect these rights, in a minimally intrusive way as described below, is not an unreasonable intrusion into the affairs of religion, but is a “reasonable limit[...] prescribed by law as can be demonstrably justified in a free and democratic society” under s.1 of the Charter.

While case law in this regard specific to independent schools is lacking, there are precedents within Catholic separate schools that may be of some assistance ruling that the religious nature of the school did not grant it the power to discriminate on the basis of sexual orientation.¹⁷⁸ The Advocate’s position is further supported by case law developments on adjacent questions that have prioritized the protection of the best interests of children and/or the rights of others, even when the freedom of religion was impacted.¹⁷⁹ As human rights law continues to evolve specific to questions related to independent schools, these questions may need to be tested in court on a case-by-case basis.

Given this, it is the view of the Advocate that it is possible to respect both the right to religion and the right to non-discrimination with minimal interference in religious instruction.

Pursuant to *R. v. Jones*, as well as sections 4 and 13 of *The Saskatchewan Human Rights Code, 2018*, it is not likely that a government could or should go so far as to impose requirements preventing a religiously-based independent school from teaching its sincerely held beliefs on what adheres or is contrary to its religious principles.

However, it is imperative that all students to whom this message is imparted are also informed of their right, under law, to non-discrimination on the grounds of sexual orientation and gender identity, as well as of health resources outside of the school or religious organization that they can access, if needed. Pursuant to Article 24 of the UNCRC, children and youth have the right to the highest attainable standard of health and State parties must ensure all children have access to health care services. For this right to be meaningfully upheld, young people must be made aware of available services. Should the newly amended subsection 197.2(m) of *The Education Act, 1995* create any barriers to the protection of these rights, the Government of Saskatchewan may need to consider additional amendments. Furthermore, religious teachings must not include the use of terms, language or actions that would denigrate or shame a student who may be questioning, exploring, or struggling with understanding their sexual orientation and/or gender identity.

¹⁷⁶ Saskatchewan Ministry of Education. (2015). *Deepening the Discussion: Gender and Sexual Diversity*. Regina, SK: Government of Saskatchewan (Retrieved from: <https://publications.saskatchewan.ca/#/products/75989>)

¹⁷⁷ Kingsbury, M., Hammond, N.G., Johnstone, F. and Colman, I. (6 June 2022). Suicidality among sexual minority and transgender adolescents: a nationally representative population-based study of youth in Canada. *CMAJ* 194 (22) E767-E774; DOI: (Retrieved from: <https://doi.org/10.1503/cmaj.212054>)

¹⁷⁸ Hall (Litigation guardian of) v. Powers, 2002 CanLII 49475 (ON SC), (<https://canlii.ca/t/1w3mh>) NOTE: This was an interlocutory injunction and a full hearing on the issue was never held.

¹⁷⁹ P. (D.) v. S. (C.), 1993 CanLII 35 (SCC), [1993] 4 SCR 141, (<https://canlii.ca/t/1frwx>); Saskatchewan (Human Rights Commission) v. Whatcott, 2013 SCC 11 (CanLII), [2013] 1 SCR 467, (<https://canlii.ca/t/fw8x4>); Law Society of British Columbia v. Trinity Western University, 2018 SCC 32 (CanLII), [2018] 2 SCR 293, (<https://canlii.ca/t/hsjpr>); Webber Academy Foundation v Alberta (Human Rights Commission), 2021 ABQB 541 (CanLII), (<https://canlii.ca/t/jh300>)

In the view of the Advocate, the protection of the physical and mental health of students by informing them of their legal rights and ensuring awareness of, and therefore access to, health care services is not the same as promotion of sexual or gender diversity.

In the course of this investigation, our office reviewed a sample of school materials relevant to this issue and found educational material that makes explicit reference to homosexuality as “vile” and “unseemly.” Further, the content of a Biology 30 textbook appears to diminish or belittle the legal rights to non-discrimination on the basis of sexual orientation with content stating that, “Despite these and other passages condemning the sin of homosexuality, today many people claim that homosexuality is not a sin but an “alternative lifestyle” that must be tolerated by all people. Some lawmakers **have even attempted to give homosexuals special privileges and legal rights** [emphasis added].”¹⁸⁰ We note this textbook was published in an American state that, at the time of its publication, did not have the same legal protections against discrimination as Saskatchewan and does not accurately reflect the current law in our province.¹⁸¹

UNCRC Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Pursuant to **Article 42** of the United Nations Convention on the Rights of the Child, children and youth have the right to be *accurately* informed of their legal rights. **Article 29** specifically directs that this be a function of education, including education within independent schools. There was no evidence provided to the Advocate that students in the Qualified Independent School(s) utilizing this resource are informed of their rights under *The Saskatchewan Human Rights Code, 2018* or of any resources that can be accessed outside of the school.

The school(s) in which this textbook is used employs the self-mastery approach described earlier. Accordingly, students rely heavily on their P.A.C.E.s/workbooks and refer to textbooks only when prompted. Positively, the Advocate reviewed the current Biology 30 P.A.C.E.s in entirety and noted that the P.A.C.E.s do not refer students to this portion of the textbook.

The Ministry of Education was made aware of the use of this textbook after the appointment of an official trustee to the school, however, did not remove it from use due to the limited reference to this passage, if any, within instruction and because doing so would have deprived students of this otherwise necessary resource. Regardless, this section of the textbook is available to all students as a primary authoritative resource. Acknowledging that independent schools have the freedom to deliver instruction from a particular religious or philosophical perspective, any information accessible to students must contain accurate information that respects their full range of human rights. Any denigrating language used in relation to sexual orientation impacts a young person’s human dignity and could cause significant harm. Even if the language used would not meet the threshold for discrimination

¹⁸⁰ Porch, T. E. and Batdorf, B. R. (2005). *Biology for Christian Schools – Third Edition*. Greenville, South Carolina: BJU press. p. 781

¹⁸¹ Mallory, C. and Sears, B. (2019). *Discrimination Against LGBT People in South Carolina*. Los Angeles, CA: The Williams Institute, UCLA School of Law (Retrieved from: <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Discrimination-SC-Jul-2019.pdf>)

on its own, if reinforced to a captive student audience over time, it could create a discriminatory environment.

As previously noted, it is now an expectation of Qualified Independent Schools and a requirement of Certified Independent Schools to conduct their own review of core resources at least every five years and provide evidence of this review to the Ministry. The Advocate has recommended that these processes be strengthened to align with regulatory requirements for Certified Independent Schools.

Additionally, the Ministry has advised the Advocate this process would follow a “rolling review” schedule that may only cover two courses per year. The review schedule described to our office could mean that certain resources will not be reviewed for up to five years. This process does not afford immediate change, as the review of certain resources could miss a significant portion of young people currently in school.

These circumstances offer additional rationale for the recommendation made earlier for the Ministry to collaborate with all registered independent schools to immediately update all resources identified as being outdated or in need of replacement to ensure content does not offend the dignity of students on the basis of any prohibited grounds under *The Saskatchewan Human Rights Code, 2018*. Accordingly, the Advocate will not make additional recommendations specific to materials and resources.

Additionally, the Advocate noted various resources utilized by many religiously-based independent schools across all categories, including Goals of Education, dress codes and presentations of school administrators to students, emphasize heteronormativity and binary concepts of gender. While it may be that these elements of the educational experience are protected under the Charter and by the restrictive enrolment provisions pursuant to sections 4 and 13(2) of *The Saskatchewan Human Rights Code, 2018*, it must also be recognized that children are typically enrolled in primary and/or even secondary schools at a young age by their parents, without the ability or opportunity to be involved in this decision. They likely do not yet have a sense of their sexual orientation or gender identity – or the capacity to assert it. They may grow into this understanding during their time at the school. It is for this reason that it is so important for all students to be made aware of their rights – further to **Articles 29 and 42** of the UNCRC – and to know where to turn if they feel they are being violated or they require other types of support not available within their school.

As discussed, and recommended in Section 7.7 of this report, given its statutory authority – and obligation – to regulate independent schools in the public interest, it is incumbent upon the Ministry of Education to also ensure independent schools are aware of and adhere to their obligations in regard to non-discrimination on all grounds under *The Saskatchewan Human Rights Code, 2018*. Again, the Administrative Procedure on “Student and Parent Complaints and Grievances” now being required of all independent schools by the Ministry as a result of our investigation is a positive step in ensuring students will be aware of their ability to raise any concerns they may have to entities outside the school. All students also have the ability to file a complaint with the Saskatchewan Human Rights Commission if they feel their rights to non-discrimination have been breached.

The Ministry of Education has a voluntary resource titled *Deepening the Discussion: Gender and Sexual Diversity* “for the use of Saskatchewan school divisions, **independent schools**, First Nations’ schools **and historical high schools** [emphasis added].”¹⁸² This document “acknowledge[s] the shared responsibility of ensuring that all students who identify as gender and/or sexually diverse have the same opportunities for safety, socialization and success in schools.”¹⁸³ Through the online toolkit connected to this resource, the Ministry acknowledges that “[f]ailure to provide accurate, non-judgmental and age-appropriate teaching and learning on sexual orientation and gender identity within the school system represents **a pressing safety, health and education concern** [emphasis added].”¹⁸⁴ Given this need, it is incumbent upon the Ministry to ensure the same protections of the safety and health of children and youth are being upheld within independent schools as they are in the provincial system. The Ministry reported to the Advocate that it believed this resource was sent to independent schools in a bi-weekly bulletin however was unable to provide confirming documentation. As this is a voluntary resource, it was left to all schools – whether independent or provincial – to determine if and how to use it.

RECOMMENDATION #35

The Ministry of Education include a requirement in either or both of *The Registered Independent Schools Regulations* and *The Registered Independent Schools Policy and Procedures Manual* that all independent schools ensure students are informed of their rights to non-discrimination under *The Saskatchewan Human Rights Code, 2018*.

RECOMMENDATION #36

The Ministry of Education include a requirement in *The Registered Independent Schools Policy and Procedures Manual* that all registered independent schools inform any students disclosing a need for physical or mental health care of available health resources provided by the Saskatchewan Health Authority, in addition to any guidance or support available within the school or its operating organization.

¹⁸² Saskatchewan Ministry of Education. (2023). *Deepening the Discussion: Gender and Sexual Diversity*. Regina, SK: Government of Saskatchewan. p. 4 (Retrieved from: <https://publications.saskatchewan.ca/#/products/75989>)

¹⁸³ Saskatchewan Ministry of Education. (2023). *Deepening the Discussion: Gender and Sexual Diversity*. Regina, SK: Government of Saskatchewan. (Retrieved from: <https://publications.saskatchewan.ca/#/products/75989>). p. 5

¹⁸⁴ Saskatchewan Ministry of Education. (2023). *Deepening the Discussion: Gender and Sexual Diversity Toolkit*. Regina, SK: Government of Saskatchewan. (Retrieved from: https://www.edonline.sk.ca/webapps/blackboard/content/listContent.jsp?course_id=_4640_1&content_id=_717880_1)

8.0 Conclusion

Our review of independent education in Saskatchewan has highlighted the multifaceted and complex nature of this matter. The Advocate recognizes and respects the many perspectives, worldviews, rights, and interests that must be balanced. This is a delicate and nuanced process.

In conducting this review, the Advocate has honoured her mandate, pursuant to *The Advocate for Children and Youth Act*, to examine service provision by any Ministry to young people and to make recommendations related to advancing the interests and well-being of children and youth within these services. Children have a right to a high quality, safe, and inclusive education, and governments have a corresponding obligation to ensure their rights to and within education – whether public or private – are respected, protected, and fulfilled. In making regulations, developing policy, and providing oversight to independent schools, the Ministry of Education provides a critical service to young people in Saskatchewan. Recent circumstances led to public questions and concerns regarding the operation of independent schools in our province, and it was deemed to be in the public interest to offer an independent, child-rights lens to the discourse.

For as long as there have been schools in Saskatchewan, the Ministry of Education has been navigating its obligations to students in independent education in what has been a very grey area with little guidance as to the extent that it could – or should – prescribe conditions on the delivery of services. In doing so, Saskatchewan has developed one of the more comprehensive oversight programs in the country. Nevertheless, the uncertainty inherent to the legal landscape of independent schooling and a lack of sufficient human and other resources dedicated to its oversight has either led to, or opened the possibility for, gaps in the system that must be addressed in order to move forward. Ministry oversight must be proactive, rather than reactive, in its ability to ensure the best interests of children are being met.

The findings and recommendations presented here arise from the issues examined and evidence gathered in our investigation. When the allegations of former students came to light, the Ministry acknowledged it had work to do to increase accountability and transparency within independent schooling and took steps to do so.

Our recommendations consider the significant work the Ministry has undertaken over the last year, however, highlight that there is still much more to do. This report endeavours to contribute to and support ongoing improvements in the government's approach to these educational issues in Saskatchewan. Our office will monitor implementation of the recommendations made through our standard processes, inclusive of requesting updates from and meeting with the Ministry of Education.

Appendix – List of Recommendations

Inspection and Supervision

Recommendation 1: The Ministry of Education develop and implement a standardized process to ensure students in all registered independent schools required to adhere to provincial curriculum are not removed from class for purposes unrelated to achieving curriculum objectives. (p. 37)

Recommendation 2: The Ministry of Education amend The Registered Independent Schools Policy and Procedures Manual to explicitly prohibit a locally approved supervisor from holding any other role with an independent school. (p. 38)

Recommendation 3: The Independent Schools and Home-based Education Unit improve documentation practices to ensure there is a qualitative record of all discussion and recommendations made to registered independent schools in all categories. (p. 42)

External Accountability and Participation Rights of Young People

Recommendation 4: The Government of Saskatchewan amend *The Registered Independent Schools Regulations* to recognize the right and entitlement of all pupils of sufficient maturity to immediate access to all procedures established by the board of a registered independent school for the purposes of investigation and mediation of any differences or conflicts with the independent school. (p. 47)

Recommendation 5: The Government of Saskatchewan amend section 35 of *The Registered Independent Schools Regulations* to recognize the right and entitlement of all pupils of sufficient maturity attending, or having previously attended, registered independent schools to independently access their own records. (p. 47)

Recommendation 6: The Government of Saskatchewan amend section 35 of *The Registered Independent Schools Regulations* to protect the right of all pupils under 18 years of age from disclosures of information that would constitute an unreasonable invasion of the pupil's privacy. (p. 48)

Recommendation 7: The Ministry of Education amend the Registered Independent Schools Policy and Procedures Manual to reflect changes made to *The Registered Independent Schools Regulations* related to access to records and protection of privacy, as recommended in this report. (p. 48)

Recommendation 8: The Government of Saskatchewan amend section 148 of *The Education Act, 1995* to recognize the right and entitlement of all pupils of sufficient maturity to immediate access to procedures established by the board of education or the Conseil scolaire fransaskois for the purposes of investigation and mediation of any differences or conflicts with the school. (p. 48)

Recommendation 9: The Minister of Education issue a directive to all boards of education and the Conseil scolaire fransaskois to amend their complaints procedures to reflect any amendments to section 148 of *The Education Act, 1995*, as recommended in this report. (p. 48)

Recommendation 10: The Ministry of Education amend the Registered Independent School: Annual Inspection form to include a prompt to confirm Administrative Procedure 152.1 – Contact Information for Students and Parents has been distributed to families at registration and is posted in a public location accessible to students. (p. 52)

Quality of Education

LEARNING ENVIRONMENT

Recommendation 11: The Ministry of Education amend its process and forms related to inspection of all categories of registered independent schools to include qualitative documentation that the:

- societal interests of the child are protected (the general conduct of the school is acceptable);
- the environment is safe and caring, and supports the learning process; and,
- the intellectual, emotional, and physical well-being of the children is acceptable. (p. 62)

TEACHER QUALIFICATIONS

Recommendation 12: The Ministry of Education conduct a review of the current requirements for teacher and principal qualifications in unfunded religiously-based Registered Independent Schools that must consider the current understandings of, and obligations to, the right of children and youth to a quality education to determine whether a more robust process for ensuring competency is required. (p. 69)

Recommendation 13: The Government of Saskatchewan amend *The Registered Independent Schools Regulations* to require all categories of funded registered independent schools, inclusive of Alternative, Associate and Historical High Schools, to only employ teachers who hold a valid Professional A Certificate issued pursuant to *The Registered Teachers Act*. (p. 69)

Recommendation 14: The Ministry of Education require the Independent Schools and Home-based Unit to confirm and document compliance with the Professional A teacher to student ratio at each supervision visit of Qualified and Certified Independent Schools. (p. 72)

GOALS OF EDUCATION

Recommendation 15: The Government of Saskatchewan amend *The Registered Independent Schools Regulations* and The Registered Independent Schools Policy and Procedures Manual to require all schools to make a formal commitment to adhere to the Goals of Education of Saskatchewan upon application for funding, and as updated or amended by the Minister of Education. (p. 81)

Recommendation 16: The Ministry of Education develop a process through which to objectively assess the goals of education of a prospective or existing registered independent school against the Goals of Education for Saskatchewan and document the rationale for, and outcome of, its assessment. This process must consider whether the goals of education submitted by an independent school align with the aims of education identified in Article 29(1) of The United Nations Convention on the Rights of the Child. (p. 81)

CURRICULUM AND PROGRAMMING

Recommendation 17: The Ministry of Education amend the Registered Independent Schools Policy and Procedures Manual to reflect the regulatory requirement that all registered independent schools “shall provide instruction in the required areas of study”, rather than “be seen to be striving to meet the requirements for instruction in the required areas of study.” (p. 84)

Recommendation 18: The Ministry of Education’s Independent and Home-based Education Unit require at least one additional visit per year in unfunded registered independent schools with a view to ensuring the seven required areas of study are being taught, the requirements of instruction are being met and the interests, well-being and rights of children and youth are being respected, protected, and fulfilled. (p. 84)

Recommendation 19: The Ministry of Education’s Independent Schools and Home-based Education Unit ensure it has updated course outlines for all grades in the seven required areas of study offered in Qualified and Certified Independent Schools and address any curriculum outcomes and indicators that may be missing. (p. 86)

Recommendation 20: The Ministry of Education amend The Registered Independent Schools Policy and Procedures Manual to accurately reflect the regulatory onus on Certified Independent Schools to “provide[...] the core learning resources [...] to the ministry for review at least once every five years or otherwise on the written request of the minister [...]” (p. 90)

Recommendation 21: The Government of Saskatchewan amend *The Registered Independent Schools Regulations* and The Registered Independent Schools Policy and Procedures Manual to require the core learning resources of Qualified Independent Schools, Alternative Schools, and Historical High Schools to be approved by the Minister of Education and be provided to the Ministry for review at least once every five years or otherwise on the written request of the Minister. (p. 90)

Recommendation 22: The Ministry of Education collaborate with registered independent schools to develop a plan to immediately update all outdated resources to ensure content does not offend the dignity of students on the basis of any prohibited grounds under *The Saskatchewan Human Rights Code, 2018*, or principles of reconciliation. (p. 92)

Recommendation 23: The Ministry of Education amend The Registered Independent Schools Policy and Procedures Manual to clearly identify the obligation on all categories of registered independent schools to incorporate First Nations and Métis content and perspectives into curriculum. (p. 96)

Recommendation 24: The Ministry of Education's Independent Schools and Home-Based Education Unit support all categories of independent schools, with a priority on those that receive public funding, to incorporate Treaty Education Outcomes and First Nations and Métis content and perspectives into instruction in all subjects at all grade levels. (p. 96)

DATA ON LEARNING OUTPUT

Recommendation 25: The Ministry of Education review its processes of collection, entry, storage and tracking of data from registered independent schools on learning outputs, make improvements to ensure the accuracy of data in Ministry records and develop policy and procedures on these processes. (p. 97)

Recommendation 26: The Ministry of Education include all Kindergarten to Grade 9 students in unfunded registered independent schools in all provincially mandated assessments in reading, writing and math. The Ministry ought to provide the necessary tools and training to school staff and administration to facilitate this participation. (p. 100)

Recommendation 27: The Ministry of Education include disaggregated data on the learning output (i.e. results of provincial assessments and graduation rates) of all categories of registered independent schools in its Annual Report, at minimum, providing overall averages at three-year intervals. (p. 102)

Non-Discrimination

Recommendation 28: The Ministry of Education amend The Registered Independent Schools Policy and Procedures Manual to emphasize the responsibility of independent schools to comply with *The Saskatchewan Human Rights Code, 2018*. (p. 104)

Recommendation 29: The Government of Saskatchewan amend section 36 of *The Registered Independent Schools Regulations* to clearly state that the ability of independent schools to restrict enrolment is limited to only those listed grounds for which its establishment was intended. (p. 105)

Recommendation 30: The Ministry of Education re-assess its termination of funding for diagnostic and assessment services against the need to balance the right of all children to non-discrimination on the basis of disability with their right to freedom of religion and conscience in education. (p. 109)

Recommendation 31: The Ministry of Education amend The Registered Independent Schools Policy and Procedures Manual to situate references to supporting students with intensive needs so that the onus to do so, up to the point of undue hardship, clearly applies to all categories of registered independent schools. (p. 109)

Recommendation 32: The Ministry of Education work with all categories of funded registered independent schools to develop policies and procedures identifying and clarifying the financial and logistic expectations and activities of all parties related to requests for assessment and/or accommodation of students with intensive needs. (p. 109)

Recommendation 33: The Ministry of Education work with all categories of registered independent schools to ensure only appropriate medical and personal information is collected for the purposes of determining whether prospective or existing students require accommodation for disabilities or intensive needs. (p. 109)

Recommendation 34: The Ministry of Education provide mandatory training to all registered independent schools on their obligations to accommodate students with intensive needs under *The Saskatchewan Human Rights Code, 2018* to the point of undue hardship. (p. 109)

Recommendation 35: The Ministry of Education include a requirement in either or both of *The Registered Independent Schools Regulations* and The Registered Independent Schools Policy and Procedures Manual that all independent schools ensure students are informed of their rights to non-discrimination under *The Saskatchewan Human Rights Code, 2018*. (p. 114)

Recommendation 36: The Ministry of Education include a requirement in The Registered Independent Schools Policy and Procedures Manual that all registered independent schools inform any students disclosing a need for physical or mental health care of available health resources provided by the Saskatchewan Health Authority, in addition to any guidance or support available within the school or its operating organization. (p. 114)





SASKATCHEWAN ADVOCATE FOR CHILDREN & YOUTH

500 - 350 3rd Ave N., Saskatoon, SK Canada S7K 6G7

Email: contact@saskadvocate.ca

Phone: 306.933.6700 | Toll-free: 1.800.322.7221



For more info, visit [**saskadvocate.ca**](https://saskadvocate.ca)



SASKATCHEWAN
advocate
FOR CHILDREN & YOUTH