Report of Findings: 25/26-AP-024
Anglophone East School District

January 9, 2026

Citation: Anglophone East School District (Re), 2026 NBOMBUD 1

Summary: The Applicant made an access request to the Anglophone East School District for statistical information regarding the number of suspensions for each school in the district over the past seven years, broken down annually. The District provided the Applicant with the total number of student suspensions across all schools for the two most recent school years. The District explained that it was unable to provide accurate data for the years prior. Informal resolution discussions resolved the question of access to the previous years' suspension counts, however the Applicant wanted to pursue these details for the two school years where it was available.

After the complaint proceeded to the investigation stage, the District dropped its objections for all but eight of the smallest schools, relying on ss. 21(1) and para. 21(2)(e) (unreasonable invasion of third party's privacy) of the *Right to Information and Protection of Privacy Act* and ss. 54(3) and 56.3(2) of the *Education Act*. The District also challenged the Ombud's jurisdiction to fully investigate this complaint, citing ss. 12(2) of the *Ombud Act*.

The Ombud found that the *Education Act* does not apply to the Applicant's access request or complaint rights, nor is the Ombud's power to investigate this complaint limited by s. 12 of the *Ombud Act*.

The Ombud also found that the annual suspension counts per school are not personal information and the risk of identifying individual students from these details, paired with other publicly available information, is remote at best. The Ombud recommended that the District disclose the yearly suspension counts for each school under its jurisdiction for the 2023/2024 and 2024/2025 school years.

Statutes Considered: *Right to Information and Protection of Privacy Act*, SNB 2009, c. R-10.6, sections 1, 21(1), 21(2)(e); *Education Act*, SNB 1997, c E-1.12, sections 54(1),

54(3), and 56.3(2); *School Administration Regulation - Education Act*, NB Reg 97-150, section 41; *Ombud Act*, RSNB 1973, c O-5, section 12(2).

Authorities Considered: *English Language School Board (Re)*, 2015 CanLII 98413 (PE IPC); *Review Report 19-148 (Re)*, 2019 NUIPC 1 (CanLII); *VinAudit Canada Inc v Yukon (Government of)*, 2023 YKSC 68 (CanLII); *Durham District School Board (Re)*, 2016 CanLII 35439 (ON IPC).

Other Resources Cited: New Brunswick, Department of Education and Early Childhood Development, *Summary Statistics – School year 2024-2025* (2025) (accessed December 15, 2025); New Brunswick, Department of Education and Early Childhood Development, *Reports on achievement* (n.d) (accessed December 15, 2025).

INTRODUCTION

[1] The Applicant made an access request under the *Right to Information and Protection of Privacy Act* ("the *Act*") to the Anglophone East School District ("the District") for "statistical information regarding the number of suspensions for each school in the district over the past seven years, broken down annually." Aware that there may be privacy considerations, the Applicant said they would accept the data in alternative format by region and school level and that elementary school numbers could be excluded if the numbers fell under the "too few to report" privacy policy.

[2] In response, the District provided the Applicant with the total number of student suspensions across all schools for the 2023/2024 and 2024/2025 school years. The District explained that "[p]rior to 2023, there was no systemic procedure for recording suspensions and therefore the data is skewed, incomplete, and inaccurate."

[3] Unhappy with the District's response, the Applicant made a complaint to this office.

[4] Informal resolution efforts resolved the question of access to the requested data prior to 2023 but not for the 2023/2024 and 2024/2025 school years for which the District had reliable data. I decided to conduct a formal investigation under ss. 68(3) of the *Act*.

APPLICANT'S REPRESENTATIONS

[5] The Applicant made this request as part of their efforts to gather statistical data about student suspensions from various school districts in the Province.

[6] The Applicant disagrees with the District's refusal to provide school-level suspension counts due to the confidential nature of student records and that disclosure could lead to the identification of individual students.

[7] In support of this position, the Applicant submitted that disclosing the suspension counts at the school level does not pose a greater privacy risk than other school-level data published by the Department of Education and Early Childhood Development ("the Department"). The Applicant referred to reports published on the Department's website, including School Enrollment by School and Grade, Provincial Assessment Results by School, Exemption Rates by School, and Student Perception Reports.

[8] The Applicant explained that they made the same request to another school district and submitted a copy of the suspension counts they received.

[9] The other school district that received a request provided annual suspension counts at the school level but withheld the suspension count if it was between one and

five inclusively. The Applicant said that this shows that this kind of data can be provided and establishes a precedent for disclosure of suspension counts at the school level.

[10] The Applicant stated that if the Department can publish these metrics on its website at that level of specificity without triggering privacy concerns under s. 21(1) of the *Act*, then suspension counts by school should not be treated differently. The Applicant was open to the District redacting any counts that were fewer than five, noting that the Department of Early Education and Childhood Development applies standard anonymization techniques, such as suppressing counts under a certain number, to protect individual identities.

[11] The Applicant is also of the view that suspensions are not private and that it is unlikely that schools make significant efforts to keep suspensions confidential.

[12] Finally, the Applicant submitted that the disciplinary practices of public schools are a matter of public interest and that transparency in how suspensions are used is essential to public accountability.

DISTRICT'S REPRESENTATIONS

[13] When this matter escalated to formal investigation, the District reconsidered its position and dropped its objections to disclosing school-level suspension counts for all but eight schools. These eight schools have the lowest number of student enrollments in the District.

[14] The District chose not to disclose the suspension counts for the larger District schools to the Applicant before I issued a decision on this complaint. This is because the District had previously given the Applicant the total number of suspensions for all District schools when it responded to the request and it does not want the Applicant to infer the suspension numbers for these eight schools by comparing the total suspension counts.

[15] The District's position is that the suspension count totals for each of these eight schools is protected for various reasons, including that disclosure of the suspension counts for each of the eight schools would be an unreasonable invasion of the students' privacy and cannot be disclosed under ss. 21(1). The District submitted that suspension counts are personal information about the students' educational history and are protected under para. 21(2)(e) of the *Act*.

[16] The District also submitted that personal information about a student, such as attendance and suspension information, is considered part of the student's pupil record.

The District referred to ss. 54(3) of the *Education Act*, which allows a superintendent to refuse access to a pupil's record if the superintendent believes that the information would be detrimental to the well-being or future development of or educational opportunities for the pupil. The District added that the Superintendent was invoking this provision to refuse access in this case.

[17] Further, the District stated that ss. 56.3(2) of the *Education Act* means that the Superintendent's ability to refuse access to pupil records prevails over access rights under the *Right to Information and Protection of Privacy Act*.

[18] As there is an appeal right of the superintendent's decision to refuse access to pupil records under s. 41 of the *School Administration Regulation – Education Act*, the District submitted that I cannot investigate the Superintendent's decision because of the limitations on my ability to investigate matters of administration under s. 12(2) of the *Ombud Act*.

ISSUES

[19] The issues before me are:

a) Does s. 54 of the *Education Act* apply to the case before me?
b) Did the District properly refuse access to the requested breakdown of suspension statics by school level under s. 21(1) (unreasonable invasion of a third party's privacy)?

[20] The public body has the burden of proving that the applicant has no right of access to the record or part of the record under ss. 84(1) of the *Act*.

[21] Where the public body establishes that the information at issue is personal information, ss. 84(2) shifts the burden to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's privacy.

ANALYSIS AND FINDINGS

A. Does s. 54 of the *Education Act* apply to the case before me?

[22] In its submissions, the District raised a jurisdictional challenge to my ability to fully investigate this complaint.

[23] I note that in responding to the Applicant's access request, the District's response advised the Applicant of their right to complain to this office or make a referral

to the court, which it was required to do under para. 14(1)(iv) of the *Right to Information and Protection of Privacy Act*.

[24] When the matter proceeded to an investigation, the District challenged my authority to investigate its decision with respect to the eight named schools, invoking provisions of the *Education Act* about pupil records (ss. 54(3) and 56.3(2)), the appeal process under the *School Administration Regulation – Education Act* (s. 41) when access to pupil records is denied, and limits on my investigation powers under s. 12(2) of the *Ombud Act*.

[25] I disagree with the District's position for the following reasons.

[26] Section 54 of the *Education Act* governs student records ("pupil records"). It requires that each pupil have their own pupil record and sets out how pupil records can be used and disclosed.

[27] Subsection 54(1) gives parents and/or a student the right to access that student's pupil record:

> 54(1) Subject to subsections (1.1) and (3), the parent of a pupil or a pupil is entitled to access to pupil records maintained in respect of the pupil.

[28] Subsection 54(3) gives the superintendent the option to refuse access to that student's pupil record as follows:

> 54(3) Where the superintendent concerned believes that access to a record maintained in respect of a pupil would be detrimental to the well-being or future development of or the educational opportunities for the pupil, the superintendent may
>
> (a) deny access to the record…

[29] The right of access to a student's pupil record under s. 54 of the *Education Act* is only afforded to the student and/or that student's parent(s). It is also qualified by ss. 54(3), which sets out the superintendent's discretion to refuse access to such a request.

[30] In this case, the Applicant's access request is not for their own child's pupil record under s. 54(1) of the *Education Act*, but rather an access request for statistical information held by the District under s. 7 of the *Right to Information and Protection of Privacy Act*.

[31] The Applicant's request for statistical information could not have been made under ss. 54(1) of the *Education Act*. The District cannot invoke the Superintendent's discretion under ss. 54(3) to refuse access in this case. It follows that the prevailing clause found at ss. 56.3(2) of the *Education Act* also has no applicability.

[32] For the same reasons, I find that the appeal rights set out in s. 41 the *School Administration Regulation* do not apply in this case. The District's argument that I am barred from investigating any portion of this complaint under para. 12(2)(a) of the *Ombud Act* is without merit.

[33] I have jurisdiction to fully investigate this complaint under s. 67(1)(a) of the *Right to Information and Protection of Privacy Act* and will now proceed to assess the merits of the District's arguments against disclosure.

B. Did the District properly refuse access to the requested breakdown of suspension statics by school level under s. 21(1) (unreasonable invasion of a third party's privacy)?

[34] Section 21 requires public bodies to refuse access if the information requested is personal information that would unreasonably invade another person's privacy.

[35] Section 21 is a mandatory exception to disclosure, which means that public bodies are prohibited from disclosing information where doing so would unreasonably invade a third party's privacy. Subsection 21(2) of the *Act* sets out certain circumstances where disclosure is deemed to be an unreasonable invasion of privacy. Subsection 21(3) must also be considered, as it deems the disclosure of certain kinds of personal information to not be an unreasonable invasion of privacy, in which case the personal information in question cannot be protected on the grounds of privacy.

[36] To rely on this exception, a public body must show that:

- the information in question is personal information about a third party, and
- that disclosure would be an unreasonable invasion of their privacy.

Step one: Are the suspension counts for the eight named schools personal information?

[37] Personal information is defined in section 1 as "recorded information about an identifiable individual". The definition includes "information about the individual's education".

[38] Statistical information generally is not considered to be personal information, as it is not about identifiable individuals.[1] While I agree that information about an individual

[1] *English Language School Board (Re)*, 2015 CanLII 98413 (PE IPC), at para. 14; *Review Report 19-148 (Re)*, 2019 NUIPC 1 (CanLII).

student being suspended is personal information about their education, it is less clear that annual suspension counts at the school level are personally identifying information about individual students.

[39] The Applicant has indicated that they are not looking for information that might identify any individual students and they would accept a response that withheld suspension counts if the numbers for a particular school and year were small.

[40] The District acknowledged that statistical information is not generally considered to be personal information but maintained that in this case, the suspension counts for the eight named schools should be considered personal information of the students as it could be used to identify individual students or risk re-identification.

[41] In support of its position, the District also raised the concept of small cell counts, which is a generally accepted statistical practice to withhold statistics when the cell number is fewer than five. This is sometimes referred to as the rule of five or fewer than five rule.

[42] The District also discussed the mosaic effect, arguing that a person could triangulate the suspension counts with other publicly available information and possibly identify individual students.

[43] The question of small counts and statistical information has been considered by other Canadian access to information oversight bodies. Their general position is that a blanket rule of withholding statistics when the cell count is less than or fewer than five is not supported by their respective access laws.[2] I agree that this is also the case in New Brunswick and the *Act* does not allow for small cell counts in statistical data to automatically be withheld on privacy grounds.

[44] Rather, each case must be assessed to determine whether information relates to an identifiable individual.

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[2] See, for example: *English Language School Board (Re),* 2015 CanLII 98413 (PE IPC), at para. 20; *Review Report 19-148 (Re)*, 2019 NUIPC 1 (CanLII); *VinAudit Canada Inc v Yukon (Government of)*, 2023 YKSC 68 (CanLII), at para. 60: “In this, the respondent’s blanket reliance on the Yukon Bureau of Statistics email opinion contrasts with the nuanced manner in which courts and privacy commissioners have considered “small cell count” (that is, small population) arguments or similar “mosaic” arguments: that a person could triangulate anonymized information with other information in order to identify personal or sensitive information. Courts and privacy commissioners are generally skeptical of such broad and speculative arguments, and a government body advancing such arguments must establish them with convincing evidence rather than mere assertion...”

[45] The District considered two cases where the access oversight bodies in Prince Edward Island and Ontario ordered the disclosure of suspension count information[3] and argued that the circumstances of the eight named schools merit different considerations.

[46] The District noted that the Ontario decision stated that "[e]ven if the high school with the lowest enrollment (299 students) expelled one student, trying to identify that one individual in a pool of 299 students would not constitute a 'small cell' count."[4] While the District accepted this reasoning, it remained of the view that the smaller numbers involved for the eight named schools merit different privacy considerations:

> A clear distinction in factual context exists between the large schools sizes and the Anglophone East School District's operational reality, which is crucial for determining the privacy risk of statistical disclosure. While previous decisions involved large schools with enrollments ranging from **272 up to over 2,000 students** and high volumes of discipline cases, the District serves a broader spectrum, including very small rural facilities with enrollments as low as **51 students** and low disciplinary histories as low as 1 suspension during a single academic year.
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> The severe disparity in the denominator (pool size) and the numerator (statistic) means the statistical safeguard relied upon *English Language School District (Re)*, and *Durham District School Board* cannot be applied to the Anglophone East School District's smaller schools.

[47] The District noted that one of the eight schools serves a community with a total population of less than 300 residents, stating that "[t]his low scale leads to the inference that there is virtually no anonymity, as nearly all families and residents are directly or indirectly familiar with one another."

[48] The District submitted that, in addition to the small community size, there are also other publicly available or readily inferable information which could be used to identify the suspended students, such as:

- the name of the school;
- the year of the suspension and attending the school: 2023-2024 or 2024-2025;
- the grade composition;
- the number of students;

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[3] *English Language School Board (Re)*, 2015 CanLII 98413 (PE IPC), and *Durham District School Board (Re), 2016 CanLII 35439 (ON IPC)*.

[4] *Durham District School Board (Re), 2016 CanLII 35439 (ON IPC)*, at para. 32.

- the primary language of instruction;
- the ability to approximate student ages based on grade levels;
- the ability to approximate the student's residence based on the school's geographic boundaries.

[49] Based on the above, the District is of the view that the disclosure of suspension data at the individual school level creates a reasonable expectation of identification and that "[w]hen student populations are small, the anonymity typically afforded by aggregate reporting is effectively eliminated." The District submitted that families and students are well known to one another in smaller communities and "even the slightest additional detail, such as grade level or year of suspension, further narrows the pool of potential individuals to an unacceptably low threshold."

[50] On the other hand, the Applicant submitted that the Department of Education and Early Childhood Development ("the Department") "routinely publishes school-level data that is both sensitive and granular", pointing to annual statistical reporting for all schools in the Province.

[51] The Department publishes annually a variety of data about the student population, including at the school level. Statistics include student enrollment by grade and student enrollment in French Immersion by grade for each school in the Province.[5]

[52] The Department also publishes the exemption rates for students who are excused from taking Provincial Assessments for any of the exemption grounds (academic, social/emotional, and unforeseen). The exemption rates are published for every anglophone school in the Province and show the number of enrolled students for the school year and the exemption rate expressed in percentages for each of the assessment types (for example: English reading, scientific literacy, mathematics).[6] While the statistics are published in percentages, it is easy to calculate the number of students who received exemptions from any of the required assessments.

[53] The Applicant correctly noted that the Department does not use the small cell count or fewer than five rule in publishing these statistics, even though the data may only refer to one student in certain cases. The Applicant submitted that these datasets show that school-level data can be disclosed without breaching student privacy and that if the Department can publish these statistics without triggering privacy concerns under ss. 21(1), then suspension counts at the school level should not be treated differently.

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[5] See for example: New Brunswick, Department of Education and Early Childhood Development, *Summary Statistics – School year 2024-2025* (2025) (accessed December 15, 2025).
[6] New Brunswick, Department of Education and Early Childhood Development, *Reports on achievement* (n.d) (accessed December 15, 2025).

[54] I agree with the District's revised position that the annual suspension counts for the larger schools can be disclosed without fear of identifying any individual students, even when the yearly suspension count for a particular school is one. There is little risk that the students in those cases could be identified, even with other publicly available information about the school and the greater community.

[55] This leaves the question of whether the suspension counts for the eight named smaller schools should be considered as the personal information of the students and whether disclosure could reasonably be expected to lead to their identification.

[56] Having considered the competing interests at play and the parties' respective positions, I am not convinced by the District's position with respect to the eight named schools. I am also not convinced that there is a specific number or cut-off point where a certain number of students at school will automatically give rise to an unreasonable invasion of privacy if suspension counts were to be disclosed.

[57] I find the following discussion from the Ontario oversight office to be helpful:

> [30] In the record before me, I am not convinced that a "small cell" count exists. The fact that a named high school may have expelled less than five students does not, on its own, constitute a "small cell" count. For example, if a high school only had 10 students enrolled in total and expelled one student in a particular year, this would arguably constitute a "small cell" count, because one would be attempting to identify a single expelled student amongst a pool of only 10 enrolled students. In such circumstances, it might be reasonable to expect, based on this "small cell" count, that the expelled student may be identified.[7]

[58] In applying this logic to the case before me, I do not find that a "small cell" count exists for any of these schools. While I appreciate that a careful analysis is needed in light of the smaller student populations and communities for each of the eight named schools, I find that it is not reasonable to expect that disclosing the yearly school-level suspension counts may identify any particular student.

[59] The suspension counts cover an entire school year, are a total count for all grades at a particular school, and give no details on when the suspensions were given to students or the length of the suspensions. The suspension counts also do not give any context about why suspensions may have been given.

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[7] *Ibid.*, note 4, at para. 30.

[60] In cases where more than one suspension was given during a school year, it is also not possible to know from the suspension count whether multiple suspensions were given to one student or whether multiple students were suspended one or more times. The higher the suspension count for a particular school during a school year, the more difficult it becomes to identify a particular student.

[61] In my view, the risk of re-identification of a particular student from the yearly suspension counts for each of these eight schools is remote. I have also considered the District's arguments that suspension count data, along with other publicly available information about individual schools, could be used to triangulate individual students and find it to be speculative.

[62] I appreciate the District's concerns about the possibility of identifying individual students and the submissions it provided in support of its position, but in my view, it would take a significant amount of effort and more detailed information to identify a particular student if this information were to be disclosed.

[63] I find that the yearly suspension count for the named eight schools is not personal information as defined in s. 1 of the *Act,* as it is not about identifiable individuals.

[64] As this is the case, there is no need to consider whether the District met the second part of the test, which is whether disclosing the suspension counts at the school level would be an unreasonable invasion of student privacy.

RECOMMENDATION

[65] Based on the above findings, I recommend under section 73(1)(a)(i)(A) of the *Act* that the District disclose the yearly suspension counts for each school under its jurisdiction for the 2023/2024 and 2024/2025 school years.

[66] As set out in section 74 of the *Act*, the District must give written notice of its decision with respect to these recommendations to the Applicant and this Office within 20 business days of receipt of this Report of Findings.

This Report is issued in Fredericton, New Brunswick this 9th day of January, 2026.

Marie-France Pelletier
Ombud for New Brunswick