

Summary

Public elementary and secondary education is free of charge for children resident in Québec. School attendance (public or private school) is compulsory for resident children 6 to 16 years of age. In keeping with the principle of equality of opportunity, the mission of a school is to impart knowledge to students, foster their social development and give them qualifications, while enabling them to undertake and achieve success in a course of study.

However, the principle of equality of opportunity is compromised in Québec today in that some children do not have access to free public education because, given their parents' precarious immigration status, the children are not considered resident in Québec. In most cases, these children have no official immigration papers because their family remained in Canada after expiration of a temporary visa or after having been refused refugee status and are therefore no longer allowed to be here. Other children are born here, but their parents have no legal status and no official papers needed for their children to enrol in school. Because of their "clandestinity," it is difficult to know just how many of these children there are. The Ministère de l'Éducation, du Loisir et du Sport (the Department) puts the figure at between 300 and 400, but organizations that work with this population cite numbers greater than that. For the most part, the children in question live in the Montréal region.

The Government of Québec is bound by the *Convention on the Rights of the Child*, which specifies that the State Parties have agreed to **make primary education compulsory and available free to all and encourage the development of different forms of secondary education**, including general and vocational education, by taking appropriate measures. It is against this background, and with a view to removing the obstacles blocking some children's access to school or to remaining in school, that the Québec Ombudsman decided to examine this issue. It has concluded that it is necessary that **all children 6 to 16 years of age living in Québec have access to free public education and that they attend elementary or secondary school, regardless of their or their parents' immigration status.**

During the intervention it undertook, the Québec Ombudsman witnessed the Department's sensitivity to the situation and willingness to act. The full report outlines the measures recently implemented to facilitate access to school for children with a precarious immigration status.

However, the Department's chosen approach does not necessarily guarantee free access to education for all children and perpetuates certain problems with regard to transparency and consistency that cause insecurity for the families concerned.

In analyzing situations in which children of precarious immigration status are excluded, certain problems requiring two distinct kinds of intervention by the Department come into focus.

First, the combination of legal and administrative requirements creates situations in which children's right to elementary and secondary education is not upheld; this in turn raises questions about the Government of Québec's international commitments. In this regard, **a regulatory amendment is suggested so that all**

children 6 to 16 years old living in Québec have access to free public elementary or secondary education, regardless of their immigration status.

Pending a new regulation, the Minister of Education, Recreation and Sports **should use his discretionary power** to ensure that all children who have a precarious immigration status and who live in Québec have access to free public elementary or secondary school.

Certain problems with regard to application of the current legal and administrative framework can be taken care of by the Department quickly, namely, problems with lack of consistency among schools boards in applying administrative standards, imprecise information to the various stakeholders, including people of illegal status, and excessive administrative requirements.

Concerning lack of consistency and problems with information, the Department must ensure that precise and uniform information is provided to school boards, the people who work with those whose immigration status is precarious, and the people directly concerned. **It must be mandatory for each school board to, among other things, post the relevant information on its website and ensure that the information is easy to find and understand.** Lastly, the Department's participation in the *Application for Simplified Access to Birth-related Government Programs and Services* program managed by the Directeur de l'État civil du Québec would make it possible to **issue a permanent code when a child is born. This code would then be required for the child to be enrolled in school.**

The Québec Ombudsman has also noted that **some school boards go beyond current regulatory requirements** by obliging parents to provide proof of the regularity of their child's immigration status each year even though **annual verification of the validity of immigration papers is not prescribed in the applicable regulation.** The Québec Ombudsman considers that **the question of the eligibility of children with a precarious immigration status for free public schooling must be separate from any action that can be legitimately taken to monitor immigration.** In fact, the inclusive models in effect in Ontario and British Columbia clearly make this distinction.

In short, the Québec Ombudsman's opinion is that an inclusive approach would help reduce the adverse effects of clandestinity on children without compromising the legitimate need to monitor immigration. Such an approach would ensure that these children's right to free public elementary and secondary education is upheld, a right clearly recognized in the *Convention on the Rights of the Child*.