



**Ontario First Nations
Special Education Review Report**

May 2017

Review Chair: Peter Garrow

This report is dedicated to two young boys who are members of the Mississaugas of the New Credit First Nation (“MNCFN”). MNCFN launched a human rights complaint against the federal government after it refused to pay for the special education services they needed. This report is the result of that human rights complaint and the efforts of MNCFN to help bring about improvements to the special education program for the benefit of those two boys and all First Nations children with special needs across the province.

This report has been produced through a collaborative process that synthesized information from previous studies and papers and from First Nations educators, education directors, administrators, academics, and organizations from across the province. The report does not claim to represent the views or positions of any particular First Nation, First Nations’ organization or treaty council in Ontario.

The First Nations members of the Ontario First Nation Special Education Working Group (“OFNSEWG”) helped to gather the information presented in this report through the direct contributions of its members, the previous reports it prepared, the Special Education Information Sharing Event it organized, and the invaluable guidance and advice provided regarding the review process. The OFNSEWG is a joint technical and advisory body of the Chiefs of Ontario and Indigenous and Northern Affairs Canada (INAC) and is mandated by the First Nations Education Coordination Unit (FNECU) to provide recommendations on issues and specific strategies for political review and/or approval for action. The First Nation members of the OFNSEWG are:

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Guiding Insights

The time has come for a radical change in Indian education. Our aim is to make education relevant to the philosophy and needs of the Indian people. We want education to give our children a strong sense of identity, with confidence in their personal worth and ability. We believe in education: as a preparation for total living, as a means of free choice of where to live and work, [and] as a means of enabling us to participate fully in our own social, economic, political and educational advancement.

National Indian Brotherhood, *Indian Control of Indian Education*, 1972, p. 3

While the federal government may have officially adopted the Indian Control of Indian Education Policy back in 1973, in practice the federal government has taken local control to mean First Nation administration of federal education programs and policies at chronically under-funded levels.

Chiefs of Ontario, *Our Children, Our Vision, Our Future: First Nation Jurisdiction over First Nation Education in Ontario*, 2012, p. 45

I want to tell you what it is like to never have the chance to feel excited about being educated. That's why some of our students begin to give up in grade 4 and grade 5. They just stop going to school. Imagine that. Imagine a child who feels they have no future even at that young age. We want our younger brothers and sisters to go to school thinking that school is a time for hopes and dreams of the future. Every kid deserves this.

Shannen Koostachin, 2008

About the Review Chair

Peter Garrow is a veteran advocate and expert on First Nations education. Peter served as Director of Education for the Assembly of First Nations for 6 years and Director of Education for the Ahkwesâhsne Mohawk Board of Education for 8 years. He is currently the Chair of the Indigenous Trustee Council of the Ontario Public School Board Association, a School Board Trustee, the lead self-government negotiator for Akwesasne, and an Instructor of Native Studies at Iohahi:io campus of St. Lawrence College. Peter received the Queen Elizabeth II Diamond Jubilee medal in 2012 and the Rotary International Paul Harris Award in 2013. He is a champion of causes such as “Shannen’s Dream”, “Jordan’s Principle” and the promotion and implementation of the “United Nations Declaration of Rights of Indigenous People.” Peter is a member of the Mohawks of Akwesasne – Bear Clan.

Summary

For decades, our children with special needs have not been receiving the services they need. Far too many have fallen through the cracks created by the inadequate government programs meant to support them. The federal government has committed to end the “chronic underfunding of the First Nations education system” and to work with First Nations to address these issues on a nation-to-nation basis.¹ This report makes recommendations toward achieving these common goals, with the ultimate objective of ensuring that *all* of our children get the resources they need to realize their dreams.

This report synthesizes information from papers and from First Nations educators, education directors, administrators, academics and organizations working on-the-ground across the province. Nothing in this report is new. Many reports have identified these problems and challenges and have made similar recommendations.² Now that there is momentum and a commitment to change, it is incredibly important that these issues finally be addressed.

¹ Liberal Party of Canada, *Real Change: A New Plan For A Strong Middle Class*, October 2015, p. 47 (“Chronic underfunding of the First Nations education system has held First Nations students back: they are behind provincial peers in reading, writing, and numeracy. Today, less than half of students on reserves graduate from high school.”); Prime Minister of Canada, 2015 Mandate Letter to the Minister of Indigenous and Northern Affairs.

² See e.g. First Nations Special Education Coordinating Unit, *Charting Our Own Path Forward: A Preliminary Analysis of the HCSEP*, 2015; Chiefs of Ontario/Kabuty Consulting, *Ontario High Cost Special Education Funding Review*, June 2010; Chiefs of Ontario, *The New Agenda: A Manifesto for First Nations Education in Ontario*, 2005; Elisabeth Bigwin, *Special Education Report*, 2005; Chiefs of Ontario, *Our Children, Our Vision, Our Future: First Nation Jurisdiction over First Nation Education in Ontario*, 2012; National Indian Brotherhood, *Indian Control of Indian Education*, 1972; Assembly of First Nations, *First Nations Control of First Nations Education*, July 2010; Assembly of First Nations, *Getting from the Roundtable to Results*, 2005; Assembly of First Nations, *First Nations Education Action Plan*, May 31, 2005; First Nations Education Council, *An Analysis of Educational Costs and Tuition Fees: Pre-school, Elementary School and High School Levels*, February 2005; First Nations Education Council, *Formula Funding for Elementary and Secondary Band Schools*, November 2006; First Nations Education Council, *Paper on First Nations Education Funding*, February 2009; First Nations Education Council, *Rationale for Funding Formula for First Nations Elementary and Secondary Schools*, April 2009; FNEC/FSIN/NAN, *Report on Priority Actions in View of Improving First Nations Education*, November 2011; First Nations Education Steering Committee, *The Cost of Quality First Nations Education*, June 2000; First Nations Education Steering Committee, *First Nations Education Financing*, February 2001; Isabel den Heyer and Fred Wien, *The Cost of Addressing the Special Education Needs of Mi'kmaw Kina'matnewey Students in Nova Scotia for Mi'kmaw Kina'matnewey*, October 8, 2001; Gerry Hurton, *A Review of First Nations Special Education Policies and Funding Directions Within the Canadian Context*, October 2002; 1986 Report of the Auditor General of Canada, ch. 11; 1988 Report of the Auditor General of Canada, ch. 14; 2000 Report of the Auditor General of Canada, ch. 4; 2002 December Report of the Auditor General of Canada, ch. 1; 2004 November Report of the Auditor General of Canada, ch. 5; 2011 Status

A list of the recommendations can be found at page 6. This summary provides a brief overview of the key issues.

Foundational Principles

Our first recommendation is that First Nations have the opportunity to achieve full and complete First Nations control of First Nations education, including in the special education context. This foundational principle is reflected throughout the report, as is the principle that all First Nations children deserve to achieve the same levels of educational success as other children. Government programs must fully reflect these foundational principles.

Funding

The federal government funding model for First Nations special education requires a complete overhaul. The government cannot continue to unilaterally set arbitrary and capped funding amounts. Instead, a new model is needed that is bottom-up, holistic, uncapped, flexible, eligible for carry over between years, and indexed. The model must provide stability and predictability for First Nations to undertake long term planning, flexibility to address unexpected costs, sufficient funding to address every First Nation's unique needs, sufficient funding for First Nations Organizations, and simplified processes that do not unnecessarily waste time on paperwork. Funding eligibility criteria must also be expanded so that First Nations can use their resources where they are needed the most. In addition, a binding legal guarantee of adequate and equitable funding is critical to ensuring funding adequacy.

Provincial Education Regulations

One in three students living on reserve attend provincially funded schools (referred to in this report as "provincial schools"). Far too many are falling through the cracks. Regulatory amendments are needed to ensure that *all* provincial school boards treat First Nations students fairly. This includes regulatory amendments to (a) cap the fees that provincial school boards can charge for special education services and (b) guarantee that First Nations pupils will be provided the same access to services as off-reserve pupils.

Regulatory amendments are also needed to help First Nations support and advocate for our children in provincial schools (subject always to parental

Report of the Auditor General of Canada, ch. 4; *Report of the Royal Commission on Aboriginal Peoples*, 1996, vol.3, ch. 5; Timmins Chamber of Commerce, *Achieving Funding Parity for First Nations Education*, 2012; Andrew Sharpe, *Investing in Aboriginal Education in Canada: An Economic Perspective*, December 2009.

consent). This requires amendments to (a) give First Nations a formal role in decision-making processes about our children with special needs (subject to parental consent) and (b) require school boards to share student information with First Nations and to ask for parental authorization for this in school registration forms.

Amendments are also needed so that First Nations students living off-reserve can choose to attend a First Nation school to learn among their peers in a culturally supportive environment. Provincial tuition funding must follow these students.

Northern and Isolated First Nations

Much more funding is needed to address the unique needs and costs in northern and isolated First Nations. These considerations are critical and must be expressly addressed in developing any funding model. Additional funding is also needed for special programs for northern and isolated communities, such as training programs for local community members to become special education staff or specialists, the development of institutional capacity, and housing for special education staff.

Access to Special Education Staff and Specialists

Access to special education staff and specialists is a huge problem for First Nations across the province, especially in northern and isolated communities. Even if funding for salaries is available, First Nations routinely cannot find qualified personnel. Additional funding and support is needed for First Nations organizations, such as the Aboriginal Institutes, to train our local people to become special education staff and specialists, especially through programs that do not require leaving the community for extended periods.

Early Childhood Education and Program Coordination

The lack of a **comprehensive** early childhood education program for First Nations is a major impediment to providing the kind of early identification and intervention that can be critically important for student success. Early childhood education programs must be available to all First Nations and for all of our children.

In addition, work is needed to consolidate the complicated and confusing patchwork of federal and provincial government programs for First Nations children in order to reduce gaps between programs, facilitate access to

programs, reduce administrative burdens, clarify responsibilities, and provide more comprehensive services.

Facilities

A lack of facilities and the current state of facilities (e.g. black mould, air and water quality problems, below-standard construction, overuse of portables, etc.) often prevent First Nations from accommodating students in an on-reserve school. The funding stream for facilities must address capital needs relating to special education, including accessible bathrooms, sensory rooms, and so on.

Helping our Children

This report is ultimately about improving the lives of First Nations children with special needs. For example, many of our children are not receiving the speech-language services they need. Communication is very frustrating for children with untreated language problems, which can cause them to lash out and develop behaviour problems.³ The failure to provide adequate services can start a child on the wrong path toward bigger and bigger problems later in life. These issues can potentially be avoided by taking steps such as revising the funding formula to ensure that the needs of students are met (see p. 18) and by increasing access to staff and specialists (see p. 50).

Without changes, far too many of our children with special needs will be denied the opportunity to learn in an on-reserve school among their peers and in a culturally supportive environment. Improved funding (see p. 18), improved facilities (see p. 54), improved access to specialists (see p. 50), and access to provincial funding for off-reserve students (see p. 46) would all help to ensure that we can accommodate more of our children with special needs in our communities.

Recommendations aimed at helping First Nation education administrators will also have a big impact on the actual lives of our children. For example, a new funding model would greatly improve a First Nation's ability to plan, develop programs, and retain qualified staff (see p. 21), all of which would result in better programming for our children. In addition, reducing administrative burdens from reporting (see p. 55), tuition agreement negotiations (see p. 37), information gathering (see p. 44), and application writing (see p. 27) would free up time and resources to be spent on program development and direct service delivery. Furthermore, better coordination and consolidation of government

³ See e.g. Ulrike Willinger, *Behaviour in Children With Language Development Disorders*, *Can J Psychiatry*, Vol 48, No 9, October 2003; see also the sources cited therein.

programs for First Nations children with special needs (see p. 51) will reduce missed funding opportunities and broaden the reach of critical programs such as early childhood education.

Special education programs and services should be in place to ensure the extra support a student requires is in place to prevent them from falling behind. Without that, too many of our children will fall farther and farther behind and eventually abandon school altogether. All of the recommendations in this report will help prevent this from happening.

There is a huge new opportunity to tackle these long-standing issues if both the federal and provincial governments do their part. It is incredibly important that we succeed. As former Deputy Grand Chief Goyce Kakegamic said:

Education is one key to survival of any society. It is through education that a culture transmits its history, its language, its traditions and spiritual beliefs. Through formal and informal education a culture reaffirms its values and passes them from generation to generation.⁴

⁴ Deputy Grand Chief Goyce Kakegamic, Nishnawbe-Aski Nation Education Conference Report, 1997, cited in Chiefs of Ontario, *The New Agenda: A Manifesto for First Nations Education in Ontario*, 2005.

List of Recommendations

Foundational Principles

Recommendation 1: That (a) First Nations have the opportunity to be completely freed from the terms and conditions of INAC's education programs and to take full and complete control of First Nations Education, should they so desire (e.g. through self-government agreements), and that, in the interim, (b) INAC's education programs be First Nations-led.

Recommendation 2: That the terms and conditions of the special education program include the objective of achieving equality of educational outcomes between First Nations children and other children with special needs and require that adequate funding be provided to achieve that objective.

Funding

Recommendation 3: That funding levels be based on a holistic and bottom-up assessment of all needs and be updated annually to address increases in population, special education costs, and need in a process that is transparent and led by First Nations.

Recommendation 4: That special education funding levels be set in a process that explicitly ensures that all needs are met, including, but not limited to:

- (a) Special education support from staff persons such as Special Education Resource Teachers, Teacher Assistants, Educational Assistants, Tutor Escorts, Counsellors, Elders, Social Workers, and other educators;
- (b) Screening and assessments (including early learning assessments for pre-school aged children);
- (c) Development of Individual Education Plans;
- (d) Specialized services from psychologists, speech and language pathologists, occupational therapists, physiotherapists, medical doctors, paraprofessionals, and other specialists and professionals;
- (e) Salaries that are equivalent to what educators and administrators earn in the provincial system (at a minimum), plus a northern/remoteness allocation, where applicable, that adequately reflects the high cost of living and other challenges related to living in northern and remote communities;

- (f) Professional development for teachers in on-reserve schools to obtain qualifications as special education professionals, paraprofessionals, or educators;
- (g) Professional development for educators (teachers and support staff) to better support students with special needs (e.g. training re autism);
- (h) Staff hired by First Nations to be housed in provincial schools to provide specialized support, advocate for student needs, and monitor the level and quality of services being provided; [see e.g. p. 41 below]
- (i) Summer programs for students with special needs that require additional support;
- (j) Resources for First Nations to advocate for students in provincial schools to ensure that they are receiving the services they need, including through formal appeals under the Ontario *Education Act*;
- (k) Program development, management, administration, and oversight, including capacity development, budgeting, application writing, reporting, planning, student tracking, needs analysis, policy development, advocacy, coordination of care, case management, etc.;
- (l) Resources, support, and guidance for parents to advocate for the interests of their children with special needs and to take advantage of procedures that are available to them to appeal decisions regarding their children, including sufficient support to overcome the present and past systemic racism that impedes some parents in being able to advocate for their children;
- (m) Support and training for parents on how best to help children with special needs at home with learning;
- (n) Cultural and linguistic curriculum development;
- (o) Equipment, technology, and supplies required by students with special needs;
- (p) Adequate travel costs for professionals to provide services in on-reserve schools and for students and their parents/guardians to travel to receive services or attend appointments where necessary;
- (q) As determined by member First Nations, coordination, pooling of resources, program development, capacity development, advocacy,

special projects and other support and services from Tribal Councils, Provincial Territorial Organizations (“PTOs”), and other First Nations organizations;

- (r) Information Technology support services, including support for services delivered through distance learning (e.g. video conference) and support for implementing data collection systems;
- (s) Second and third level services (to the extent not included above);
- (t) Facilities, such as sensory rooms, sufficient classroom space, lifts, hoists, accessible bathrooms, etc. [capital funding will presumably continue to be accessed through a separate funding stream];
- (u) Facilities for early childhood education where early identification and intervention services can be provided [capital funding will presumably continue to be accessed through a separate funding stream];
- (v) Contingency funding for lawsuits and unexpected expenses; and
- (w) Access to all of the above services without delays that could negatively impact a child’s development (e.g. due to long wait lists).

Recommendation 5: That a new funding model be developed that is:

- **Needs-based and bottom-up** (the overall “pot” should be based on the sum of the needs in each First Nation);
- **Uncapped** (the overall “pot” should not be capped for any year or between years);
- **Flexible** (First Nations should be allowed to carry over funding from year to year);
- **Transparent, stable, and predictable** (funding amounts should be known long in advance and should not be at risk of sudden or unanticipated decreases);
- **Holistic** (covering all aspects of student needs); and
- **Indexed** (the overall funding should automatically increase based on increases in population, need, and cost inflation).

Recommendation 6: That serious consideration be given to a hybrid funding model in which:

- A **base amount** for each First Nation would be determined using a formula constructed through a robust needs analysis based on factors such as student numbers, remoteness, community characteristics, number of identified children, and so on; and
- An additional **special circumstances amount** would be available to cover the cost of students requiring at least one staff person or for other special circumstances, which could be accessed through a quick, easy, and predictable application process that provides multi-year funding and guaranteed amounts.

Recommendation 7: That funding eligibility criteria be expanded to include: (1) services for students with needs categorized as “low-cost” and “mild to moderate;” (2) all travel costs necessary for students to receive services, including travel for students, parents/guardians, and service providers; (3) services for students before school, after school, and in the summer; (4) respite care; (5) services for students not resident on reserve; (6) services for students under 4 years old; (7) services for students over 21 years old seeking a high school diploma; and (8) facilities.

Recommendation 8: That First Nations Organizations, such as tribal councils, PTOs, and the Chiefs of Ontario, be provided with sufficient, stable, and predictable funding, including funding for functions such as program development, professional development, pooling of resources for service delivery, pooling of resources to access specialty services, and capacity building. Funding should also be provided for special projects to address structural problems.

Recommendation 9: That a simple process be developed for First Nations to direct INAC to redirect funding amounts to First Nations Organizations that provide services or support to that First Nation should the First Nation so desire.

Recommendation 10: That a legally binding guarantee of adequate and equitable funding levels be enacted, including an explicit guarantee that funding be sufficient to ensure equality of special education outcomes between First Nations and other Canadian children.

Provincial Education Regulations

Recommendation 11: That the fees regulation under Ontario's *Education Act* be amended to cap the fees that provincial school boards can charge for special education at the level that the school board would receive from the province for an equivalent resident pupil of the board. First Nations must continue to be able to negotiate for extra services above and beyond those normally provided by a school board.

Recommendation 12: That education regulations be amended to state that a board shall provide at least the same level and quality of services to First Nations tuition-fee-paying pupils as it would to its resident pupils, including special education services.

Recommendation 13: That the Ontario Ministry of Education work with First Nations and First Nations Organizations to develop a protocol for school boards to follow to better welcome, integrate, and support First Nations staff housed in provincial schools.

Recommendation 14: That a working group be struck to develop amendments to Ontario regulations to recognize the right of First Nations to be notified of decisions about the special education services to be provided to their members and to appeal those decisions, subject always to a parent's right to override any actions by the First Nation in this regard and to opt-out of any future involvement by the First Nation.

Recommendation 15: That Ontario amend its education regulations to require school board registration forms to authorize school boards to share student information with the relevant First Nation, notify the First Nation about special education identification and placement decisions, and allow the First Nation to appeal those decisions, all subject to a parent's right to opt-out of these items on the registration form.

Recommendation 16: That the Ontario Ministry of Education direct tuition funding for First Nations students who reside off reserve and who wish to attend or who are attending a First Nations school to the First Nations school if no agreement has been reached for a school board to flow funds to the First Nations school, and to amend education regulations to allow this if necessary.

Special Education in Northern and Isolated First Nations

Recommendation 17: That funding levels for northern, remote and isolated First Nations reflect the actual costs of providing high quality special education services based on actual needs, including funding for special costs faced by

these First Nations (e.g. travel for professionals, students and parents/guardians, shipping costs for materials and supplies, etc.) and that these considerations be directly and explicitly addressed in the development of any funding model.

Recommendation 18: That funding for teacher housing (i.e. teacherages) should be sufficient to provide adequate housing for special education staff, especially in remote and isolated communities where the housing shortage continues to impact the housing options available.

Recommendation 19: That special support and funding be provided to assist with capacity development and institution building for First Nation organizations in relation to special education for northern and isolated communities.

Access to Special Education Staff and Specialists

Recommendation 20: That the federal government increase funding to First Nations organizations and Aboriginal Institutes to develop and deliver programs for local community members to obtain qualifications to become special education staff and specialists, including the development of specific targets (e.g. re graduation numbers, percent of on-reserve positions filled by graduates, etc.). This is required throughout the province, but a special focus on on-reserve and distance learning for members of remote and isolated First Nations is needed. Funding should be available to the Aboriginal Institutes and other organizations.

Recommendation 21: That the Ministry of Advanced Education and Skills Development continue to increase its financial and other support for Aboriginal Institutes and other First Nations organizations developing and delivering post-secondary programs for special education staff and specialists.

Early Childhood Education and Program Coordination

Recommendation 22: That programs for First Nations early childhood education be improved so that they are comprehensive, easy to access, available to all First Nations children, and seamlessly coordinated with other education programs.

Recommendation 23: That programs for outside-the-classroom support for First Nations children with special needs be improved so that they are comprehensive, easy to access, available to all First Nations children, and seamlessly coordinated with each other. This includes, but is not limited to,

case management, before and after school programs, respite care, home care, summer programs, and home renovations for accessibility.

Recommendation 24: That INAC provide funding for a First Nations-led working group to assess options regarding the coordination and potential consolidation of federal and provincial government programs for First Nations students.

Reporting

Recommendation 25: That INAC provide First Nations organizations with funding to participate in the design of a new data collection system, to implement that system, and to analyze and use the data collected in that system based on OCAP principles.

Recommendation 26: That INAC assist in the creation of a new data collection system for the special education program that is: (a) designed and implemented by First Nations; (b) streamlined, efficient, and flexible for First Nations administrators; (c) accurate; (d) centered around key outcomes, such as closing the education gaps; (e) coordinated with other reporting and data collection instruments; (f) tied to mechanisms to bring about improvements to programs and services; and (g) under First Nations administration and control.

Implementation Timeline

Recommendation 27: That implementation occur by the following target dates:

- Prior to the 2017-2018 school year for recommendations regarding policy or regulatory changes (#s 1, 2, 7, 9, & 11-16);
- Prior to the 2018-2019 school year for the creation of a new funding model and new reporting system (#s 3-6, 8, 10, 17-19, & 25-26);
- During this fiscal year for additional funding to flow for First Nations organizations to develop and deliver programs to train special education staff and specialists, with target timelines to meet specific targets to be determined by the relevant First Nation organizations (#s 20 & 21); and
- Prior to March 31, 2018 for the completion of a First Nations-led proposal regarding the consolidation and coordination of federal/provincial special education programs, and March 31, 2019 for the implementation of that proposal (#s 22-24).

Context

Our children deserve a high-quality, needs based, culturally-relevant education. They deserve services that are as good as those provided to non-Indigenous children, as well as additional services to address each child's unique needs and our unique cultures, traditions, and languages. Those unique needs include, for example, the challenges arising from the intergenerational impacts of residential schools, the 60s Scoop, and other assimilationist policies. Ultimately, all of our children deserve, at a minimum, the opportunity to attain the same level of educational achievement and success as non-Indigenous children.

Our children have a right to these things based on our inherent First Nations rights, our Treaties, and international law, as well as the right to control our own education. The basis of these fundamental rights has been detailed many times before and need not be repeated here.⁵

Our children also have a right to these things based the principle of substantive equality as enshrined in Canadian law. This has always been the case. However, a recent landmark decision by the Canadian Human Rights Tribunal has removed any ambiguity surrounding the right of our children to substantive equality and has confirmed that our children deserve the same levels of educational success.⁶ Providing anything less than substantive equality is illegal discrimination against First Nations children. In other words, it is against the law for the federal government to provide flawed and underfunded programs that do not enable our children to achieve the same levels of educational success as other Canadian children.

This report focuses on recommendations to reform the First Nations special education system and achieve substantive equality for First Nations children with special needs. It does not focus on *why* that needs to happen. Indeed, the federal government has already committed to this and the reasons for it are self-evident and widely known. However, some brief points are worth mentioning:

⁵ National Indian Brotherhood, *Indian Control of Indian Education*, 1972; Chiefs of Ontario, *Our Children, Our Vision, Our Future: First Nation Jurisdiction over First Nation Education in Ontario*, 2012, pp. 4-15; Richard Powless, *The New Agenda: Building Upon the History of First Nations Education in Ontario*, 2004 in Chiefs of Ontario, *The New Agenda: A Manifesto for First Nations Education in Ontario*, 2005; Assembly of First Nations, *First Nations Control of First Nations Education*, July 2010, p. 9; see also the reports cited in footnote 1 above.

⁶ *First Nations Child and Family Caring Society of Canada v. Attorney General of Canada*, 2016 CHRT 2.

- The House of Commons has unanimously passed a motion calling on the government to adopt *Shannen’s Dream* and to provide the funding needed to put on-reserve schools on par with off-reserve schools.⁷ The motion was unanimously supported by all parties and Members of Parliament.
- The federal government has committed to implementing all of the calls to action of the Truth and Reconciliation Commission (“TRC”), including those regarding education equality and funding.⁸ Those recommendations include that the federal government provide sufficient funding to close the educational achievement gaps within one generation and enact legislated funding guarantees.⁹
- Studies show that improvements in First Nations education are an extremely good investment that would greatly improve the GDP, increase tax revenue, and reduce government expenditures on social programs by many **billions** of dollars.¹⁰ The reason is simple: If a child is neglected in school they are more likely to end up without job prospects and in trouble, all at a huge cost to society. The right support could help that child provide a major contribution to society when they grow up, both culturally and financially.
- The Parliamentary Budget Officer estimated that First Nations schools in Ontario received approximately *half* the per-student funding they would have received using the Ontario provincial funding formula in 2012-

⁷ House of Commons of Canada, 41st Parliament, 1st Session, Journal No. 84, February 27, 2012 (“That, in the opinion of the House, the government should adopt Shannen’s Dream by: (a) declaring that all First Nation children have an equal right to high quality, culturally-relevant education; (b) committing to provide the necessary financial and policy supports for First Nations education systems; (c) providing funding that will put reserve schools on par with non-reserve provincial schools; (d) developing transparent methodologies for school construction, operation, maintenance and replacement; (e) working collaboratively with First Nation leaders to establish equitable norms and formulas for determining class sizes and for the funding of educational resources, staff salaries, special education services and indigenous language instruction; and (f) implementing policies to make the First Nation education system, at a minimum, of equal quality to provincial school systems.”)

⁸ Statement by Prime Minister on release of the Final Report of the Truth and Reconciliation Commission, December 15, 2016; Prime Minister of Canada, 2015 Mandate Letter to the Minister of Indigenous and Northern Affairs Canada.

⁹ Truth and Reconciliation Commission of Canada, *Calls to Action*, 2015, recommendations 6-12.

¹⁰ Andrew Sharpe, *Investing in Aboriginal Education in Canada: An Economic Perspective*, December 2009; Timmins Chamber of Commerce, *Achieving Funding Parity for First Nations Education*, 2012;

2013.¹¹ It also estimated that a very significant gap will continue to exist even after the funding increases in Budget 2016.¹² In 2009 the Parliamentary Budget Officer estimated that First Nations schools require over \$2 billion in initial capital funding plus far more ongoing annual capital and operations funding than planned.¹³

- The Platform for the current government notes that “chronic underfunding of the First Nations education system has held First Nations students back” and that “First Nations’ control of First Nations education is vital to achieving improved outcomes.”¹⁴ These commitments are now reflected in the Mandate letter for the Minister of Indigenous and Northern Affairs Canada.

The Government of Ontario has also made important commitments:

- In 2007, Ontario set a target of 2016 “to close the gap between Aboriginal and non-Aboriginal students in the areas of literacy and numeracy, retention of students in school, graduation rates, and advancement to postsecondary studies.”¹⁵
- In response to the TRC calls to action, Ontario has committed to “address the social and economic challenges now faced by Indigenous communities after centuries of colonization and discrimination.”¹⁶
- The September 2016 Mandate letter to the Minister of Education directs the Minister to “work to close the achievement gap and improve graduation rates for underrepresented groups of students such as Indigenous students, children and youth in care, students living in poverty, and students with special education needs.”¹⁷

The primary reason to implement these recommendations is to improve the wellbeing of First Nations children with special needs (for specific examples, see

¹¹ Office of the Parliamentary Budget Officer, *Federal Spending on Primary and Secondary Education on First Nations Reserves*, December 6, 2016, p. 3.

¹² *Ibid.* at p. 5.

¹³ Office of the Parliamentary Budget Officer, *The Funding Requirement for First Nations Schools in Canada*, May 25, 2009.

¹⁴ Liberal Party of Canada, *Real Change: A New Plan For A Strong Middle Class*, October 2015, p. 47-48.

¹⁵ Ministry of Education, *Ontario First Nation, Métis, and Inuit Education Policy Framework*, 2007, p. 5.

¹⁶ Government of Ontario, *The Journey Together: Ontario’s Commitment to Reconciliation with Indigenous Peoples*, May 30, 2016.

¹⁷ Premier of Ontario, September 2016 Mandate Letter to the Minister of Education, September 23, 2016.

p. 4 above). Other reasons include, in short, that these kinds of reforms are required by our inherent First Nations rights, Treaties, international law, and domestic Canadian equality law; are a good economic investment; have been recommended many times in many reports; have been promised by the current governments; and are the right thing to do.

Foundational Principles

First Nations Control of First Nations Education

INAC's education programs are currently delivered according to terms and conditions set unilaterally by the federal government. This must change if we are to realize First Nations control of First Nations education. As an interim step, the terms and conditions of the programs should be developed jointly with First Nations. First Nations should also have the opportunity to be completely freed from the terms and conditions and to take full and complete control of First Nations Education, should they so desire. This could occur in a number of ways including, but not limited to, self-government arrangements.

It is not necessary to explain here why First Nations control of First Nations education is so important. The meaning and importance of full and complete control has been explained many times in materials published by the Assembly of First Nations, the Chiefs of Ontario, and others.¹⁸ In addition, the principle has been formally adopted by the federal government.¹⁹ Although programs for First Nations should be developed jointly with First Nations, that cannot be used as an excuse for inaction on known problems or as a reason to deny clearly justified requests from First Nations for funding or support. Discussions about changes to the overall program should not get in the way of necessary on-the-ground improvements.

¹⁸ National Indian Brotherhood, *Indian Control of Indian Education*, 1972; Chiefs of Ontario, *Our Children, Our Vision, Our Future: First Nation Jurisdiction over First Nation Education in Ontario*, 2012, p. 45; Assembly of First Nations, *First Nations Control of First Nations Education*, July 2010;

¹⁹ Letter from Honourable Jean Chrétien to Mr. George Manuel, February 2, 1973; Prime Minister of Canada, 2015 Mandate Letter to the Minister of Indigenous and Northern Affairs Canada; Liberal Party of Canada, *Real Change: A New Plan For A Strong Middle Class*, October 2015, p. 48 ("We believe that First Nations' control of First Nations education is vital to achieving improved outcomes"); see also the Political Accord Between First Nations and the Government of Ontario, August 24, 2015, which recognises that "First Nations exist as self-governing Indigenous Nations and Peoples with their own governments, cultures, languages, traditions, customs and territories."

Recommendation 1: That (a) First Nations have the opportunity to be completely freed from the terms and conditions of INAC’s education programs and to take full and complete control of First Nations Education, should they so desire (e.g. through self-government agreements), and that, in the interim, (b) INAC’s education programs be First Nations-led.

Equality for Our Children with Special Needs

It is completely unacceptable that First Nations children graduate less often, drop out more often, and struggle in school in far greater numbers as compared to other Canadian children. We need to achieve equality of opportunities and outcomes. As a first step, the “National Program Guidelines” for INAC’s special education program should be amended to include that goal as a primary objective of the program.

This is important because the Guidelines govern how INAC officials make decisions and administer their program.²⁰ INAC officials should be required to make decisions that are consistent with the objective of achieving substantive equality such that First Nations children achieve the same levels of academic success as other Canadian children. In addition, INAC staff must be qualified to make the requisite decisions relating to special education programs, services, formulas and funding.

The Auditor General of Canada has highlighted the importance of incorporating equality-related service standards into program objectives.²¹ She also recommends specific performance measures.²² In government-speak, progress toward equality in educational achievements is a key “performance measure.” There are likely other principles that should be included in the Guidelines. This recommendation focuses on one important high-level principle, and is not intended to cover all principles that should be addressed in the Guidelines.

²⁰ Indigenous and Northern Affairs Canada, *High-Cost Special Education Program - National Program Guidelines 2016-2017*, <https://www.aadnc-aandc.gc.ca/eng/1450118480703/1450118500775>

²¹ Auditor General of Canada, *2011 Status Report to the House of Commons*, ch. 4, p. 2-3 (“To provide true comparability, it would be important to include a clear statement of comparability in program objectives and define comparability on a program-by-program basis. Roles and responsibilities would also need to be specified, as would the level of services required for comparability. In addition, the costs of achieving comparability would have to be determined and programs would have to be adequately funded. It would be necessary to establish measures for evaluating performance and determining whether the program was achieving the desired outcomes.”)

²² *Ibid.*

We are wary to make any recommendations regarding *INAC* guidelines because First Nations education should be governed by *First Nation* guidelines. Any recommendations about *INAC* programs or *INAC* policies are a temporary solution while First Nations work towards full First Nations control of First Nations education. Such recommendations are *not* implicit support for *INAC* continuing to dictate programs and policies affecting First Nations. Indeed, the opposite is the case.

Recommendation 2: That the terms and conditions of the special education program include the objective of achieving equality of educational outcomes between First Nations children and other children with special needs and require that adequate funding be provided to achieve that objective.

Funding

Sufficient Funding Levels

At present, funding for the special education program is determined solely by the federal government in a secret Treasury Board process. Treasury Board sets the national funding level without providing any explanation or justification of how that was done. The total national “pot” is divided between the regions based primarily on population. The Ontario “pot” is then divided between the First Nations according to an allocation formula. First Nations are only consulted on the allocation formula used to divide the fixed pot among First Nations, not on the size of the overall pot, which is, of course, the more important issue.

Funding levels should be based on a holistic and bottom-up assessment of all needs, including the unique needs of remote and isolated First Nations, and should be updated annually to address increases in population, special education costs, and need. The process must be transparent and First Nations-led. Funding must be comprehensive and must cover all needs. This would require major changes.

The additional \$115 million provided by the federal government in Budget 2016 is a major step forward. These funds are allowing some First Nations to provide special education services that were desperately needed but never available before. However, the overall funding amount was determined by the federal government in the old fashioned, secretive, top-down, *ad hoc*, non-needs-based method. That may have been done because the government was so new, but in

the future, funding must be based on bottom-up assessments of needs. Otherwise, we will not be able to close the education gaps.

In addition, the Parliamentary Budget Officer found in 2016 that the new amounts will not even provide funding on par with the provincial system, let alone provide the additional funding needed to address the unique challenges faced in many First Nations communities, such as those flowing from the intergenerational impacts of residential schools (see p. 13 above re those unique needs).²³

Recommendation 3: That funding levels be based on a holistic and bottom-up assessment of all needs and be updated annually to address increases in population, special education costs, and need in a process that is transparent and led by First Nations.

Recommendation 4: That special education funding levels be set in a process that explicitly ensures that all needs are met, including, but not limited to:

- (a) Special education support from staff persons such as Special Education Resource Teachers, Teacher Assistants, Educational Assistants, Tutor Escorts, Counsellors, Elders, Social Workers, and other educators;
- (b) Screening and assessments (including early learning assessments for pre-school aged children);
- (c) Development of Individual Education Plans;
- (d) Specialized services from psychologists, speech and language pathologists, occupational therapists, physiotherapists, medical doctors, paraprofessionals, and other specialists and professionals;
- (e) Salaries that are equivalent to what educators and administrators earn in the provincial system (at a minimum), plus a northern/remoteness allocation, where applicable, that adequately reflects the high cost of living and other challenges related to living in northern and remote communities;
- (f) Professional development for teachers in on-reserve schools to obtain qualifications as special education professionals, paraprofessionals, or educators;

²³ Office of the Parliamentary Budget Officer, *Federal Spending on Primary and Secondary Education on First Nations Reserves*, December 6, 2016, p. 5.

- (g) Professional development for educators (teachers and support staff) to better support students with special needs (e.g. training re autism);
- (h) Staff hired by First Nations to be housed in provincial schools to provide specialized support, advocate for student needs, and monitor the level and quality of services being provided; [see e.g. p. 41 below]
- (i) Summer programs for students with special needs that require additional support;
- (j) Resources for First Nations to advocate for students in provincial schools to ensure that they are receiving the services they need, including through formal appeals under the Ontario *Education Act*;
- (k) Program development, management, administration, and oversight, including capacity development, budgeting, application writing, reporting, planning, student tracking, needs analysis, policy development, advocacy, etc.;
- (l) Resources, support, and guidance for parents to advocate for the interest of the children with special needs and to take advantage of procedures that are available to them to appeal decisions regarding their children, including sufficient support to overcome the present and past systemic racism that impedes some parents in being able to advocate for their children;
- (m) Support and training for parents on how best to help children with special needs at home with learning;
- (n) Cultural and linguistic curriculum development;
- (o) Equipment, technology, and supplies required by students with special needs;
- (p) Adequate travel costs for professionals to provide services in on-reserve schools and for students and their parents/guardians to travel to receive services or attend appointments where necessary;
- (q) As determined by member First Nations, coordination, pooling of resources, program development, capacity development, advocacy, special projects and other support and services from Tribal Councils, Provincial Territorial Organizations (“PTOs”), and other First Nations organizations;

- (r) Information Technology support services, including support for services delivered through distance learning (e.g. video conference) and support for implementing data collection systems;
- (s) Second and third level services (to the extent not included above);
- (t) Facilities, such as sensory rooms, sufficient classroom space, lifts, hoists, accessible bathrooms, etc. [capital funding will presumably continue to be accessed through a separate funding stream];
- (u) Facilities for early childhood education where early identification and intervention services can be provided [capital funding will presumably continue to be accessed through a separate funding stream];
- (v) Contingency funding for lawsuits and unexpected expenses; and
- (w) Access to all of the above services without delays that could negatively impact a child's development (e.g. due to long wait lists).

New Funding Model

The current funding model is “top down,” non-transparent, non-needs-based, inflexible, subject to unexpected changes, and based on the highly problematic contribution agreement mechanism. The federal government acknowledges that a new model is needed.²⁴

Criteria and Basic Requirements for a Funding Model

A new funding model would, at a minimum, need to meet these criteria:

1. Provide the stability and predictability needed for First Nations to undertake long-term planning, develop lasting programs, and retain the best staff.
2. Provide the flexibility needed to address unexpected costs, unforeseen needs (e.g. students with high needs arriving mid-year), and fluctuations in costs.
3. Provide sufficient funding to fully address the high costs faced by:

²⁴ Prime Minister of Canada, 2015 Mandate Letter to the Minister of Indigenous and Northern Affairs Canada; Liberal Party of Canada, *Real Change: A New Plan For A Strong Middle Class*, October 2015, p. 47.

- a. Northern, remote, and isolated First Nations;
 - b. Small schools;
 - c. First Nations with high rates of special needs;
 - d. First Nations experiencing an influx of students needing one-on-one support; and
 - e. First Nations with significant capacity and professional development needs.
4. Provide a fast, simple, and fair process for obtaining funding so that time is not unnecessarily wasted on funding applications so that First Nations with less experienced proposal writers will not lose out on important funding opportunities.
 5. Facilitate an intervention-based approach that allows proactive supports to be put into place as soon as possible.

Although some aspects of a funding model are complicated, there are some items on which there is almost complete agreement. These can be considered to be basic requirements for any funding model:

- **Bottom-up approach:** The overall pot should be based on the sum of the needs in each community. Under the current system, the federal government determines the overall pot, which is then divided between regions and First Nations. It is not needs-based.
- **Uncapped:** The overall “pot” should not be capped for any year or between years and should instead be allowed to fluctuate to meet needs. Under the current system, the overall pot is capped each year. No funding increases were provided from 2007 and 2016 and, after the increase in Budget 2016, no increases are planned for 2017 to 2021.
- **Carrying over allowed:** First Nations should be allowed to carry over funding from year to year. This will help First Nations address fluctuations in need from year to year, plan, and spend funds more efficiently. INAC announced in January of 2017 that carrying over will now be allowed.
- **Indexed:** The overall funding should automatically increase based on increases in population, need, and the cost of providing services (per the Consumer Price Index).

Hybrid Approach to Funding Allocation

One promising funding allocation methodology is a hybrid approach that involves a base amount plus an additional amount for special circumstances. This option is discussed in detail below, followed by a discussion of other options starting at page 30.

Under the hybrid approach, a **base amount** for each First Nation would be determined using a formula created based on a robust needs analysis. The formula would be based on factors such as student numbers, remoteness, community characteristics, number of identified children, and so on. The formula would automatically adjust to increases in need, population, and cost. The formula would be indexed to inflation and would be reviewed each year for potential updates. Although the funding would increase based on need, it would generally not fluctuate by large amounts each year, which would make planning easier. First Nations would receive a forecast of future funding levels to further facilitate planning.

The formula would not simply divide up a fixed pot (as is the case now). Instead, it would provide specific amounts based on key factors. The formula would be specifically designed so that a First Nation with certain characteristics (e.g. population, geographic isolation, special needs incidence rate, etc.) would receive sufficient base funding. This would be designed to cover all of the needs discussed in Recommendation 4 above (see p. 19).

In addition to the base amount, a **special circumstances amount** would be available through an application-based process to cover the cost of students requiring at least one staff person or for other special circumstances. This is important because costs for students requiring one-on-one support can “swamp” a First Nation’s special education budget. It is not possible to address severe needs in a funding formula because the variation in costs is too high and too unpredictable. In one year a First Nation can have no children requiring one-on-one support and the next year it could have 2, 3, or more. Even a few children with severe needs can require supports that cost more than the First Nation’s entire special education budget. The special circumstances amount would ensure that these costs can be covered.

This would need to be fundamentally different from the application-based process in place prior to 2006. Funding under that process was subject to an overall cap so First Nations would never know what they would receive. We need a process that would provide guaranteed amounts based on a straightforward and predictable application process. Because there would be

no overall “cap,” First Nations could be confident that they would receive funding as long as they met the relevant criteria.

This would also need to be fundamentally different from the “exceptional circumstances” clause in current funding agreements. Additional funding is very rarely provided under that clause and the federal government has almost complete discretion to reject funding requests. Instead, we need a process whereby the federal government would be *required* to provide funding as long as the relevant criteria are met.

The application process would need to be quick, easy, and predictable. The following solutions would help:

- Once a student has been approved, funding should be guaranteed for the duration of their elementary or secondary school education subject to reassessments of the student’s identification and placement.
- Once a student has been approved, only minimal paperwork should be required in future years.
- Pre-existing paperwork, such as a special needs assessment and independent education plan, should be sufficient to support the application.
- To provide predictability, minimum amounts should be guaranteed for certain kinds of applications (e.g. at least \$X for a student requiring a full-time Education Assistant).
- The availability of funding cannot be subject to overall funding caps. If it is, it will be impossible for First Nations to be reasonably confident that valid requests will be granted.
- To address the common situation of special needs students enrolling mid-way through the year, First Nations should be allowed to apply mid-year.
- Funding decisions should be made as soon as possible and within a defined service standard (e.g. 30 days or less).

The model should recognise the importance of ensuring that students are able to receive services at home in the First Nation with their peers. The formula should not provide an incentive for First Nations students with special needs to be sent off reserve. It should not be the case that the only way to get the

required services is for the student to go to the closest provincial school. Children must be allowed to remain at home to receive required special education services, and equivalent services to Provincial Demonstration Schools must be funded to ensure children can remain in their home community with their family, should they choose to do so.

Currently, a First Nations school will not receive funding for students that enroll after the nominal roll report is submitted in September/October. A hybrid model could address this problem by having two nominal roll dates (e.g. October and February) as in the provincial system or by providing application-based funding for First Nations enrolling students with high needs after October.

A hybrid approach provides stability and predictability through the base amount, which will help with long-term planning, program development, and staff retention. This approach also provides the flexibility needed to address fluctuations in costs and special circumstances through the application-based amount.

Key Differences from the Current Formula and Model

There are important differences between the base amount formula proposed above and the current formula.²⁵ Most importantly, the current formula allocates a fixed pot that is not determined based on needs.²⁶ The proposed base amount formula would be the *opposite*: the formula would be based on a detailed bottom-up needs assessment, which would in turn determine the overall pot.

This is incredibly important for northern First Nations. Instead of receiving a *percent* of an inadequate pot, they need to receive a *dollar amount* that is sufficient to meet the actual costs and challenges of providing special needs education in northern First Nations.

²⁵ Notes: First Nations and the Ontario First Nations Special Education Working Group have long said that the current funding formula in Ontario is inadequate and needs to change. See First Nations Education Coordination Unit, Chiefs of Ontario, *Charting Our Own Path Forward: A Preliminary Analysis of the HCSEP 2015*, p. 13

²⁶ For example, the current formula divides up 70% of the funding for First Nations based on student numbers. A needs-based model would need to provide a specific dollar amount, not just a percentage of an inadequate pot. Similarly, northern First Nations simply receive 10% of funds to address the higher costs in the north.

Steps in Historic Model

Federal government determines the overall “pot”



Overall pot is divided between regions based mainly on population



Ontario’s portion is allocated to First Nations by formula



Funding for provincial demonstration schools comes off the top



A base amount of \$72,000 provided to every First Nation



The leftover is divided as follows: 70% based on nominal roll, 10% for small schools, 10% for northern communities, 10% for remote communities.

Steps in Hybrid Model

Analysis done to determine community-level needs and costs



Formula developed based on needs analysis



First Nations receive base amount determined by formula



First Nations can apply for additional funding



The overall “pot” is equal to the sum of the base and application amounts for each First Nation



Formula is reviewed each year for potential improvements and revisions

The differences between a needs-based model and the current model are summarized in the below table:

Current Model	A New Hybrid Model
Overall pot is capped	Overall pot will adjust based on needs
The model is top-down , with an overall pot that is set and later divided between First Nations	The model is holistic and bottom-up , with the needs/cost for each First Nation being determined first, which then determines the overall pot

Current Model (cont.)	A New Hybrid Model (cont.)
Increased funding to one First Nation means less funding for others – a divide and conquer mechanism	Without a capped pot, increased funding to one First Nation would not mean less funding for others
Funding is not needs-based	Funding is needs-based , though a carefully constructed formula and application process
Overall pot is determined by unilateral federal government decision	Overall pot is determined jointly with First Nations via needs assessments
Overall pot is determined in a secretive Treasury Board process	Overall pot is determined in a transparent process
No funding top-ups for special circumstances or fluctuations in very high needs students	Extra funding available for special circumstances and fluctuations through an easy application process
Funding is usually the same year-to-year and is not indexed	Funding is automatically indexed to need, population, and prices through the funding formula
The formula rarely changes and is hard to change because it divides up a fixed pot	The formula is updated every year and is easier to change because overall funding isn't fixed

Comparison with the Provincial Funding Model

The hybrid approach discussed above has some of the important positive features of the model that the Province of Ontario uses to fund school boards, but it also has important adaptations for the First Nations context.

In terms of positive similarities, Ontario's model for special education also uses a hybrid approach involving amounts distributed by formula and amounts distributed by application.²⁷ Ontario's formula-based funding is also based on

²⁷ The amounts distributed by formula are the (1) Special Education Per Pupil Amount, (2) Differentiated Special Education Needs Amount (formerly the High Needs Amount), (3) Behaviour Expertise Amount, and (4) Special Equipment Amount (the per-pupil portion). The amounts distributed by application are the (1) Special Incidence Portion (SIP), and (2) Special

factors such as student numbers, forecast incidence rates, remoteness, and others.²⁸ Ontario's application-based funding is also primarily intended to address students with very high needs requiring one-on-one support.²⁹ To provide certainty and reduce administration, approved applications are good for three years without having to resubmit new documentation.³⁰ Provincial school boards can also carry over special education funding from year to year.³¹ The hybrid model discussed above shares these positive characteristics.

Ontario's model also provides significant additional funding to address small schools, non-English language learning, and remoteness. For example, the funding for the Conseil scolaire de district catholique des Aurores boréales (Catholic School Board District of Northern Lights) is approximately \$27,000 per student.³² However, the formula for First Nations schools would need even greater recognition of small school size, remoteness, and isolation (e.g. because of the large number of schools in First Nations without road access). Even those with road access may be hundreds of kilometers away from where the required services are available.

First Nations are fundamentally different than provincial school boards and funding models for school boards cannot simply be copied into the First Nation context. For instance, school boards are large and can use their size to balance out fluctuations between schools and between years. First Nations cannot do that and are more vulnerable to fluctuations in need. More fundamentally, culture, control, and capacity are critically important issues in the First Nations context, as is the need to redress historical disadvantages and achieve substantive equality between First Nations students and other children. These are just a few of the important differences.

Another difference is that the proposed application-based funding for First Nations must have more flexible criteria and a lower threshold to help First Nations address fluctuations in need. Whereas extra provincial funding is available for students requiring two full-time equivalent staff, the threshold for

Equipment Amount (SEA, the claims-based portion). See Ontario Ministry of Education, *2016-17 Education Funding: A Guide to the Special Education Grant*, pp. 6-10.

²⁸ Ontario Ministry of Education, *2016-17 Education Funding: A Guide to the Special Education Grant*, pp. 6-8.

²⁹ This applies to the SIP but not always the SEA; Ontario Ministry of Education, *Special Education Funding Guidelines, Special Incidence Portion (SIP), 2016-17*, Spring 2016, p. 2.

³⁰ *Ibid.*, p. 1.

³¹ Ontario Ministry of Education, *2016-17 Education Funding: A Guide to the Special Education Grant*, p. 5.

³² Ontario Ministry of Education, *School Board Funding Projections for the 2015-16 School Year*, p. 18 (<https://www.edu.gov.on.ca/eng/funding/1516/2015FundingEN.pdf>). Calculation: total funding (excluding capital) of \$20,669,557 divided by 761 students.

First Nations would need to be significantly lower, perhaps one full-time equivalent staff person. In addition, the application-based funding would need to cover the actual costs and not be subject to the \$27,000 cap in the provincial model. This is because First Nations are much smaller than provincial school boards and much less able to balance out fluctuations in need.

This is Feasible and Necessary

The model discussed above would require a fundamental change in the way that the federal government runs its program. Instead of being firmly capped, the overall funding levels could fluctuate within each year and between years. However, this fundamental change is feasible and is needed in order to finally end discriminatory underfunding of First Nations education.

From a feasibility perspective, this kind of open-ended funding model is used elsewhere in government and can be managed with careful forecasting. Examples includes social assistance, student loans, and employment insurance. In each case, the actual dollars spent in a year could be much more or less than forecast at budget time. Social assistance and employment insurance payments depend on how many people lose their jobs; student loans depend on how many qualified people apply. If the applicants meet the criteria they will receive a specified amount of funding whether or not the program is within its budget forecast. Unlike with current First Nations funding, the government does not say: “too bad, we’ve run out of funding and can’t help you even though you qualify.”

Governments manage these kinds of programs through forecasting. The same could be done for First Nations education and special education. The needs at an aggregate level are not going to change from year to year by such a large degree that the government would be caught off guard. After the formulas have been working for some time, the year-to-year changes will likely be moderate, predictable, and manageable.

But even if the government does not like uncapped and open-ended funding, underfunding cannot continue because it constitutes illegal discrimination against First Nations children.³³ They will need to move in this direction, both because that is the law and because it is the right thing to do. Indeed, government officials are already exploring this option.

³³ *First Nations Child and Family Caring Society of Canada v. Attorney General of Canada*, 2016 CHRT 2.

Other Approaches to Funding Allocation

The hybrid approach described above is only one of the potential options. Alternative approaches include purely application-based funding and purely formula-based funding. Those options are discussed below:

1. **Application-based funding** requires First Nations to apply for funding based on applications detailing their needs. First Nations special education funding was application-based in Ontario prior to 2006. The funding amounts were uncertain, which hindered planning, and First Nations with less capacity to prepare applications were highly disadvantaged.
2. **Formula-based funding** provides First Nations with an allocation based on a formula. First Nations special education funding was formula-based from 2006 to 2016 in Ontario. This allowed for early intervention prior to formal identification because funding was predetermined without the need to submit applications. However, it did not address the high costs in remote First Nations or fluctuations of students with high needs.
3. **Hybrid funding** provides a base amount based on a formula but also allows First Nations to apply for additional amounts based on need. If carefully constructed, this option combines the benefits of formula-based funding (certainty, less administration, increased fairness) with the benefits of application-based funding (better accommodation of special circumstances and unpredictable higher needs).

This review has focused on the third option. A decision will need to be made in the future by First Nations about which approach to take.

Recommendation 5: That a new funding model be developed that is:

- **Needs-based and bottom-up** (the overall “pot” should be based on the sum of the needs in each First Nation);
- **Uncapped** (the overall “pot” should not be capped for any year or between years);
- **Flexible** (First Nations should be allowed to carry over funding from year to year, as was announced in January, 2017);

- **Transparent, stable, and predictable** (funding amounts should be known long in advance and should not be at risk of sudden or unanticipated decreases);
- **Holistic** (covering all aspects of student needs); and
- **Indexed** (the overall funding should automatically increase based on increases in population, need, and cost inflation).

Recommendation 6: That serious consideration be given to a hybrid funding model in which:

- A **base amount** for each First Nation would be determined using a formula constructed through a robust needs analysis based on factors such as student numbers, remoteness, community characteristics, number of identified children, and so on; and
- An additional **special circumstances amount** would be available to cover the cost of students requiring at least one staff person or for other special circumstances, which could be accessed through a quick, easy, and predictable application process that provides multi-year funding and guaranteed amounts.

Expanded Funding Eligibility Criteria

“Low-cost” Services for Students with Mild to Moderate Needs

The funding criteria for the current High Cost Special Education Program contains a number of problematic restrictions. Perhaps the most important is that students must have “high-cost special education needs.”³⁴ In other words, funding cannot be spent on “low-cost” students. This is highly problematic for a number of reasons:

- The distinction between high-cost and low-cost is very vague and uncertain, which causes many difficulties for First Nations administrators.
- Comparisons with provincial funding and services are hard to make because provinces do not make the high/low cost distinction.

³⁴ Indigenous and Northern Affairs Canada, *High-Cost Special Education Program - National Program Guidelines 2016-2017*, s. 5.2.

- The distinction causes unnecessary challenges in budgeting and tracking costs that relate to both low-cost and high-cost students (e.g. educational assistant salaries, equipment, etc.).
- The low cost allocation through the Band Operated Funding Formula is inadequate.

First Nations should be allowed to spend special education dollars on all students with special needs as they see fit.

Travel by Service Providers, Students, and Parents/Guardians

Additional travel is often necessary for students to obtain special education services. This can include specialists travelling to a remote First Nation to provide services, bussing for students with special needs to attend school, or travel costs for students and their parent or guardian to attend appointments outside of the community. These costs can be very high, especially in “fly-in” First Nations. However, they are necessary for students to access services and are not covered elsewhere. Although some of these costs should be covered under the existing program, an amendment is needed to clarify that special education funding can be spent on all travel costs necessary for students to receive services.

Services Insufficiently Funded Under Other Programs

Based on the current Guidelines, program funding cannot be spent on:

- Services for students before school, after school, or in the summer;³⁵
- Respite care;
- Services for students not resident on reserve;
- Services for children under 4 years old;
- Services for young adults over 21 with special needs who have dropped out of school and need support in obtaining their high-school diploma;
or

³⁵ It appears that the Guidelines are not being consistently applied with respect to before and after school programs. The wording of the *Guidelines* does not necessarily prohibit spending on before and after school programs, but some First Nations report that they have been told that these kinds of expenses are ineligible.

- Capital investments in facilities.

First Nations should have the ability to use special education funds for these purposes. In some cases, these restrictions have resulted in delays or denials of services.³⁶ First Nations are in the best position to decide how to spend their special education dollars. These restrictions should be removed.

These restrictions should be removed even though these areas are funded under other programs, such as the funding available from Health Canada for children under 4 years old. Just because funding is available elsewhere for a service does not mean it is *sufficient funding* (even though it should be). In addition, First Nations sometimes experience delays or barriers in accessing other pots of money. By restricting the funding eligibility, the program Guidelines prevent First Nations from being able to find practical solutions to fill funding gaps and our children lose out.

In addition, it is possible to have certain expenditures be *eligible* even though the program is not specifically funded to address them (because they are funded elsewhere). This could be made clear in program guidelines. In other words, the eligibility criteria could be changed even though it is still understood that other pots should be properly funded to cover those services.

The point is simple: First Nations should have the freedom to spend special education dollars as they choose to best support children with special needs. Restrictions do not help that happen. The federal government should not continue to get in the way of a First Nation that can find a way to save special education dollars so that this money can be spent to fast-track an assessment of a 3-year-old, build an accessible bathroom needed to keep a student on-reserve, or otherwise. This should be encouraged, not prohibited.

Recommendation 7: That funding eligibility criteria be expanded to include: (1) services for students with needs categorized as “low-cost” and “mild to moderate;” (2) all travel costs necessary for students to receive services, including travel for students, parents/guardians, and service providers; (3) services for students before school, after school, and in the summer; (4) respite care; (5) services for students not resident on reserve; (6) services for students under 4 years old; (7) services for students over 21 years old seeking a high school diploma; and (8) facilities.

³⁶ See e.g. Jordan’s Principle Working Group, *Without denial, delay, or disruption: Ensuring First Nations children’s access to equitable services through Jordan’s Principle*, 2015.

Expanded Funding for First Nations Organizations

In Ontario, the current program does not have a mechanism or additional funding to support other First Nations organizations such as Tribal Councils, Education Service Organizations, the Provincial Territorial Organizations, or the Chiefs of Ontario. Additional funding should be available for these organizations to support First Nations in delivering special education services. Examples of programs that could be delivered include: assisting with program development, assisting with professional development, organizing conferences, creating a database of specialists, and delivery of specialist services (e.g. speech-language pathologists, occupational therapy, physical therapy, etc.). This should be over and above the funding for First Nations and cannot result in reduced funding for First Nations.

This requires additional funding for additional costs, including institutional development, capacity development, program development, administration, travel, coordination and so on. Funding for First Nations Organizations cannot be redirected from the funding required by First Nations for direct services unless so determined by a First Nation.

However, it should be easier for First Nations to re-direct some of the funding they receive to First Nations Organizations for the delivery of direct services (e.g. speech-language pathologists). A more transparent and detailed funding formula would allow First Nations to easily identify the funding amounts earmarked for certain services that they wish to be delivered by a Tribal Council. Similarly, a simple form could be created for First Nations to complete and send to INAC to request the redirection of funds.

First Nations Organizations are currently being used to effectively deliver direct services. One example is the Keewatinook Okimakanak Board of Education (“KOBE”), which provides assessments, speech-language services, and other special education services to students of five First Nations. Kwayaciiwin Education Resource Centre also provides formal assessments and other services to 23 First Nations. These services are funded in a variety of ways, including through application-based funding. They require more stable and comprehensive funding.

Although organizations can provide significant benefits, this must remain an “opt in” option. The needs of each First Nation are unique and First Nations must continue to be able to control First Nations education. Solutions that work in one area may not translate to another. For example, some First Nations are located relatively close to urban centres but fairly far from other

First Nations, especially in southern Ontario. In these cases, First Nations may find it expensive and difficult to pool direct service resources with other First Nations.

In addition, First Nations must continue to receive the funding they require to deliver special education services to their members.

There are certain structural problems that First Nations organizations are well-placed to help address. One example is the challenge faced by First Nations in locating specialized services. One potential solution would be the creation of a database of service providers that First Nations can access.³⁷ Another example is the shortages of paraprofessionals and specialists, such as Speech-Language Pathologists. One potential solution would be to work with Aboriginal Institutes, universities and colleges to develop community-based or distance programs that could be delivered on reserve to encourage training of local people (see p. 50 below for further details). Funding is needed for these kinds of initiatives.

Recommendation 8: That First Nations Organizations, such as tribal councils, PTOs, and the Chiefs of Ontario, be provided with sufficient, stable, and predictable funding, including funding for functions such as program development, professional development, pooling of resources for service delivery, pooling of resources to access specialty services, and capacity building. Funding should also be provided for special projects to address structural problems.

Recommendation 9: That a simple process be developed for First Nations to direct INAC to redirect funding amounts to First Nations Organizations that provide services or support to that First Nation should the First Nation so desire.

See also Recommendation 4, which calls for sufficient funding for First Nations Organizations, and Recommendation 5, which calls for transparent, stable, and predictable funding.

Guarantee of Adequate and Equitable Funding

Current practices place our children at the mercy of unilateral federal government funding and policy decisions. The federal government has dictated funding levels, including unilateral decisions to cut and cap funding and cut

³⁷ The database could include details on the service provider such as whether they have had a police records check, whether they have experience working for First Nations, and so on.

entire programs. This cannot continue. Our children need a binding legal guarantee of adequate and equitable funding levels that are sufficient to ensure equality of outcomes in special education. If funding is not legally guaranteed, it is only a matter of time before cuts and caps are imposed by the federal government as part of its budgeting process.

This is not a new idea. The Auditor General of Canada has been highly critical of the use of contribution agreements to fund programs such as education.³⁸ She has contrasted this model with programs funded based on mandatory legislation. In the Auditor General's words, statutory programs "must be fully funded" whereas funding under contribution agreements "depends on the availability of resources."³⁹ The Auditor General described this as one of the deeper structural problems that must be fixed for actual progress in relation to on-reserve services.⁴⁰

In Ontario, the provincial *Education Act* guarantees an appropriate special education for all children. It states that:

*The Minister **shall** ensure that all exceptional children in Ontario have available to them, in accordance with this Act and the regulations, appropriate special education programs and special education services without payment of fees by parents or guardians resident in Ontario...*⁴¹

The Ontario Minister of Education is required by law to ensure that all children have appropriate special education programs and services available to them. There is no equivalent in the federal context.

Practically speaking, a legal guarantee of adequate funding would add significant weight to the Identification, Placement, and Review Committee ("IPRC") processes whereby identification and placement decisions are made about specific students. Arbitrary funding caps would no longer be able to override the needs of students. Instead, funding would be required to be sufficient to adequately implement IPRC decisions and ensure that needs are being met.

A binding legal guarantee of adequate funding is completely different from the draft education legislation that was proposed by the Harper government. The Harper government's bill continued a paternalistic and colonial approach to

³⁸ Auditor General of Canada, *2011 Status Report to the House of Commons*, ch. 4, p. 3-4.

³⁹ *Ibid.*, p. 4.

⁴⁰ *Ibid.*, pp. 2 & 5.

⁴¹ *Education Act*, RSO 1990, c. E.2, s. 8. (3).

education that did not recognise First Nation control. In contrast, a binding legal guarantee of adequate funding only governs what the federal government does. It would not restrict First Nations control over education because it would only put requirements on the federal government, not First Nations.

The importance of a legal guarantee cannot be stressed enough. Although the federal government has taken very positive steps on funding issues, much more progress is needed to make sure that we do not stagnate or move backward as governmental priorities change. Only a legal guarantee can keep us on track towards equality of outcomes as time passes.

Recommendation 10: That a legally binding guarantee of adequate and equitable funding levels be enacted, including an explicit guarantee that funding be sufficient to ensure equality of special education outcomes between First Nations and other Canadian children.

Provincial Education Regulations

Approximately 1 in 3 students living on reserve attend schools funded by the Ontario Ministry of Education.⁴² The provincial government plays an incredibly important role and must make improvements to ensure that First Nations students receive appropriate special education programs and services.

Ensure Charges to First Nations are Fair and Reasonable

Children living on reserves cannot attend provincial schools for free. Payment must be provided to the provincial school board by the First Nation or federal government. Unfortunately, some school boards have been overcharging First Nations for special education services.⁴³ They overcharge by demanding more money for a student than the school board would receive from the province for an equivalent pupil of the board living off-reserve.

Although this situation has improved significantly, many First Nations report that this problem continues.⁴⁴ Some families are still being told that they must move off-reserve to a provincial catchment area if they want their child with special needs to go to school. This is unfair, discriminatory, and must stop.

⁴² Data provided by INAC. Includes elementary and secondary students.

⁴³ Discussions with educators, administrators, and education directors at First Nations schools and First Nations organizations in 2016 and 2017, including at Special Education Information Sharing Event on January 10, 11, and 17, 18 (“Information from First Nations”).

⁴⁴ *Ibid.*

Under the provincial funding model for special education, school boards receive a fixed amount of funding per student for special education.⁴⁵ This amount is included in the base tuition fee that school boards charge for each enrolled student living on reserve.⁴⁶ Therefore, the base tuition fee that First Nations pay to school boards for their students is all that a school board would generally receive for an equivalent off-reserve student. The base tuition fee is generally all that should be charged to First Nations in relation to special education.

However, provincial school boards can also apply for student specific funding for certain students with extremely high needs requiring at least two full-time staff persons or expensive specialized equipment.⁴⁷ The additional funding for staff persons is capped at \$27,000 for a full-time student (not including equipment).⁴⁸ Unfortunately, in some cases school boards are charging far more than the \$27,000 cap and are requiring the payment of additional charges even if the threshold for the provincial funding (e.g. two full-time staff persons) has not been met. In other words, some school boards are charging more for First Nations students than they would receive from the province for an equivalent student living off-reserve.

Although fewer school boards are requiring the payment of high fees, an increasing number are overcharging by using staff paid for by First Nations to cover basic services that should be provided through normal Board resources.⁴⁹ In one example, a First Nation is paying for 6 staff persons in a provincial school to provide culturally-based support for all of its students. The school board is using 4 of these staff persons exclusively with 4 high needs students requiring approximately one staff person each. Those services should be addressed through staff funded by regular tuition dollars. This would free up those staff people to provide the “additional” culturally-based services that the First Nation wants to make available to their students to help them excel in provincial school.

Many options have been tried to resolve overcharging, including working groups, meetings, and the creation of tuition agreement guides. These have helped, but the problem has stubbornly persisted and the only way to fix it is to amend the regulations governing school boards to prevent overcharging and

⁴⁵ Ontario Ministry of Education, *2016-17 Education Funding: A Guide to the Special Education Grant*, pp. 6-8; see footnote 27 above for details.

⁴⁶ O. Reg. 216/16, *Calculation of Fees for Pupils for the 2016-2017 School Board Fiscal Year*, s. 3.

⁴⁷ *Ibid.* (This application-based funding is called the Special Incidence Portion (SIP) and the Special Equipment Amount (SEA).)

⁴⁸ Ontario Ministry of Education, *Special Education Funding Guidelines, Special Incidence Portion (SIP)*, 2016-17, Spring 2016, p. 2.

⁴⁹ Information from First Nations, *supra*. note 43.

to ensure that First Nations students are treated fairly and equitably. Indeed, one simple additional sentence could end this long-standing problem.

In particular, we recommend amending the regulations under Ontario's *Education Act* to cap the fees that provincial school boards can charge for special education at the level that the school board would receive from the province for an equivalent resident pupil of the board. First Nations would still be allowed to pay for extra services above and beyond those normally provided by a school board or reach other agreements with the school board.

First Nations administrators have been told by Ministry of Education representatives that school boards are already required to abide by the funding criteria outlined above. First Nations administrators have had meetings with Ministry of Education staff and school board personnel where this has been communicated. Unfortunately, this is not set out clearly enough in the regulations. There is no single, clear statement that a First Nation can point to in discussions with a school board to ensure compliance with this important criteria.

There would be many benefits to this regulatory amendment:

- Capping the fees would help prevent families from being told to move off reserve or place their children in the care of child and family services if they want their child with special needs to get an education.
- Capping the fees would help prevent First Nations special education budgets from being “swamped” by high costs charged by provincial school boards.
- At the moment, First Nations often have to negotiate regarding high fees before provincial school boards will take a student with high special needs. First Nations have little bargaining power because school boards are not required to enroll on-reserve students and often there is insufficient time to negotiate as the school year quickly approaches. Capping the fees would, in many cases, totally eliminate the need to negotiate. This would protect First Nations students and save countless hours for First Nations administrators.
- First Nations often have to negotiate clauses in tuition agreements regarding special education. Capping the fees would greatly simplify negotiations.

- Capping the fees would protect First Nations that do not have tuition agreements with school boards. This is a very large number of First Nations.
- Including the fee cap in the legally binding regulations will help ensure that *all* school boards charge reasonable fees for First Nations students.
- Fees could not be used by a board as a mechanism by which to deny a student enrollment in a board school.

These benefits can be achieved by adding one sentence to the fees regulation. The Ontario Cabinet has the power to do this by regulation and can do so in a matter of months.⁵⁰ All that is required is that the following section be added to the *Calculation of Fees for Pupils* regulation (currently O. Reg. 216/16):

(6.1) A board shall not charge higher fees for a First Nations⁵¹ pupil than the board would receive from the Minister were that pupil a resident pupil of the board, with the exception of costs for special services payable under subsection (6) for special services the board does not provide its resident pupils.

Recommendation 11: That the fees regulation under Ontario’s *Education Act* be amended to cap the fees that provincial school boards can charge for special education at the level that the school board would receive from the province for an equivalent resident pupil of the board. First Nations must continue to be able to negotiate for extra services above and beyond those normally provided by a school board.

If this regulation is made, it will be especially important to ensure that school boards are providing the required services. That issue is addressed in the following section.

⁵⁰ Cabinet has the power under section 11(3) and (4) of the *Education Act* to make the proposed regulation amendments. Those sections read as follows: “(3) Subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations, (a) providing for the circumstances in which a fee is receivable by a board in respect of the provision of education by the board to elementary or secondary school pupils or any class or group of elementary or secondary school pupils; and (b) providing for the method of determining the amount of any fee receivable under clause (a). (4) A regulation made under subsection (3), (b) may prescribe the maximum amount of any fee that may be charged and may provide for the determination of fees by boards.

⁵¹ The *Education Act* uses the term “Indian pupil.” Using the term “First Nations pupil” would require a minor amendment to the definitions section.

Guarantee Equality for First Nations Students in Provincial Schools

Most school boards work hard to ensure that First Nations students receive, at a minimum, the same level and quality of education as other students.⁵² However, this is not always the case. Some school boards will sometimes prioritize their regular resident pupils over First Nations students when it comes to the allocation of educational assistants and other special education services.⁵³ To prevent this, we recommend that school boards be legally required under the *Education Act* to provide, at a minimum, the same level and quality of services to First Nations tuition-fee-paying pupils as they would to their resident pupils, including special education services.

Recommendation 12: That education regulations be amended to state that a board shall provide at least the same level and quality of services to First Nations tuition-fee-paying pupils as it would to its resident pupils, including special education services.

Ensure Adequacy of Services in Provincial Schools

Although many First Nations children are receiving high quality special education services in provincial schools, some are falling through the cracks and not getting the services they need, which causes them to fall further and further behind. More systems need to be put into place to make sure that First Nations children with special needs are getting the services they need, including systems to facilitate active case management relating to First Nations children with special needs.

First Nations Education Counsellors

To help ensure that First Nations students enrolled in provincial schools get the special education services that they need, we recommend that First Nations be funded by the federal government to hire staff to be present in provincial schools, such as a First Nations Education Counsellor. In addition to providing direct support for First Nations students, that person can monitor the services being provided. If those services are lacking, the staff person can informally advocate on behalf of the student and/or alert parents or administrators at the First Nation so that they can take appropriate steps.

⁵² Information from First Nations, *supra*. note 43.

⁵³ *Ibid.*

First Nations Education Counsellors are incredibly important. For example, they can act as a liaison between parents and a school. This role is particularly important for children with special needs. At least one First Nations Education Counsellor is needed in every provincial school with First Nations students.

Some First Nations are already doing this and are reporting positive results.⁵⁴

We recommend that funding be made available from the federal government for this kind of staff person in Recommendation 4 above.

On the provincial level, work is needed to reduce barriers to housing First Nations Education Counsellors in provincial schools. This includes work to ensure that First Nations education counsellors are treated with respect and given access to the information and resources they need to assist First Nations children. In the past, labour unions have opposed First Nations staff being housed in provincial schools. Work is also needed at a provincial level to address these labour relations concerns and remove the associated obstacles.

Recommendation 13: That the Ontario Ministry of Education work with First Nations and First Nations Organizations to develop a protocol for school boards to follow to better welcome, integrate, and support First Nations staff housed in provincial schools.

Support for Parents

Parents can play a pivotal role in ensuring that their children are getting the special education services that they need. However, there are often significant barriers for First Nations parents. For example, provincial schools are often located far from the First Nations, which makes it hard to monitor the services being provided and to take advantage of appeal procedures. Language and cultural barriers also exist. In addition, parents may not be aware that they can appeal the decisions made about their children.

We recommend that assistance and funding be made available to support parents to advocate on behalf of their children with special needs. This recommendation is contained in Recommendation #4 above. The details of this kind of assistance would be determined by First Nations and First Nations Organizations that would apply for this kind of funding. It could include parent/student advocates hired by First Nations or First Nations Organizations

⁵⁴ Information from First Nations, *supra*. note 43.

who could provide information to parents, support them in advocating for their children, attend IPRC meetings, and so on.

In addition, school boards are required to create a Parents' Guide about the processes for the assessment of students with special needs and the rights of parents to appeal decisions about their children.⁵⁵ Copies should be provided to the main office of each First Nation with students enrolled with that school board annually.⁵⁶

Advocacy and Appeals by First Nations

Under Ontario's current regulation regarding special education identification, placement, and appeals, First Nations have absolutely no role and are completely left out of the formal processes for the identification and placement of our children with special needs in provincial schools.⁵⁷ First Nations have no rights under the regulation to receive notice of decisions made about our children, to appeal negative decisions, or to advocate on their behalf.⁵⁸

This needs to change.

Under the regulation, parents do have the right to be notified about decisions about their children and to appeal those decisions. This is incredibly important. However, there is no "plan b" for families that do not have the capacity to launch formal appeals about their children's education. Children in all families deserve a good education. To help these children, First Nations need to be allowed to play a more active role, subject to parental consent. This would allow First Nations to undertake more active case management (subject to parental consent).

This is particularly important for families from remote First Nations where travel costs can be prohibitive for family involvement. In addition, students who are required to leave the reserve to attend school often do so under the guardianship of an education services organization.

First Nations require a formal legal right to be notified of decisions about the special education services to be provided to their members and to appeal those decisions, subject always to a parent's right to override any actions by the First Nation in this regard and to opt-out of any future involvement by the First

⁵⁵ O. Reg. 181-98, *Identification and Placement of Exceptional Pupils*, s. 13.

⁵⁶ Note that school boards are required by regulation to ensure that copies are available at each school. O. Reg. 181.98, *Identification and Placement of Exceptional Pupils*, s. 13(2).

⁵⁷ O. Reg. 181-98, *Identification and Placement of Exceptional Pupils*.

⁵⁸ *Ibid.*

Nation. This would require substantial amendments to the relevant regulation, and, therefore, we recommend that a working group be struck to develop specific proposed changes.

This kind of involvement by First Nations exists in other areas. First Nations have extensive rights to notice, to appeals, and to participate in proceedings under the *Child and Family Services Act*. For example, First Nations have the legal right to be notified when one of its member children might be apprehended or otherwise impacted by a children's aid society.⁵⁹ First Nations also can launch and participate in appeals about child welfare decisions made about its member children.⁶⁰

We have the collective right and interest, as First Nations, to ensure that our children receive an adequate education, no matter whether that education is on-reserve or in a provincial school. The current regulations do not recognise that collective right and interest by completely excluding our communities from decision-making regarding special needs students. We have a stake in the outcomes for all of our students because education is such an important tool to transmit our culture to the next generation and to ensure that we continue to grow stronger as proud and distinct people.

Recommendation 14: That a working group be struck to develop amendments to Ontario regulations to recognize the right of First Nations to be notified of decisions about the special education services to be provided to their members and to appeal those decisions, subject always to a parent's right to override any actions by the First Nation in this regard and to opt-out of any future involvement by the First Nation.

Access to Information

First Nations education administrations report that it has become increasingly difficult to access information on our children from provincial schools.⁶¹ This is a major impediment to efforts to better support our children in provincial schools. We need to be able to get updates on the day-to-day status of our member children so that we can step in to provide extra support if needed. We

⁵⁹ *Child and Family Services Act*, R.S.O. 1990, c. C.11. See, for example, sections 35(1)(e), 54(3)(f), 58(4)(d), 61(7), 64(5)(e), 65.1(6)(f), 116(4)(g), 141.2(1), 141.2(3), 144(2)(c)(i), 144(6), 213.1.

⁶⁰ *Child and Family Services Act*, R.S.O. 1990, c. C.11. See, for example, sections 36(4)(c), 39(1)(4), 58(2)(b), 64(4)(d), 65.1(4)(f), 69(1)(e), 80(4)(f), 141.2(2), 144(9)(3), 213.1.

⁶¹ Information from First Nations, *supra*. note 43.

also need overall data and tracking so that we can plan and develop programming.

We can access information if we get signed consent forms from parents. But this is not a realistic solution. It requires a large amount of unnecessary work and has not proven to be workable. Challenges in getting in contact with so many parents means that success rates in obtaining signed consent forms is often low.⁶² The requirement for separate consent forms is also problematic in the case of organizational guardianship for students from northern First Nations.

A better solution is available: all school registration forms should provide authorization for school boards to share student information with the First Nation, subject to a parent's right to decline this option. This is being done very successfully with at least one school board.⁶³ It can be as simple as a box that can be checked if a parent does not want information shared with the First Nation about the child.

Registration forms should also include the option to opt-out of First Nation notice and participation in decisions regarding special education (as discussed in the previous section).

Including these items on registration forms would provide parents with choice while also streamlining the process so that First Nations can better monitor and support their children with special needs.

Although some aspects of this could be achieved by school boards on a one-by-one basis, there are major benefits to including this in a regulation. For example, changes in regulation are needed for registration forms to include opt-out options in relation to First Nation notice of and participation in special education decisions (discussed above). In addition, a regulatory change would ensure that this positive change can be implemented across the province, not only in the most progressive school boards.

Recommendation 15: That Ontario amend its education regulations to require school board registration forms to authorize school boards to share student information with the relevant First Nation, notify the First Nation about special education identification and placement decisions, and allow the First Nation to

⁶² *Ibid.*

⁶³ *Ibid.*

appeal those decisions, all subject to a parent's right to opt-out of these items on the registration form.

Consideration should be given to mechanisms to allow for information sharing about students of a First Nation living off-reserve as well.

Tuition for Off-Reserve Students Attending First Nations Schools

Some First Nations schools are receiving absolutely no tuition for the off-reserve students attending their school. This means that fewer resources are available to all students in these First Nations schools. In addition, many First Nations students living off-reserve are turned away from First Nations schools due to lack of funding and jurisdictional issues. We are losing an incredible opportunity to transmit our cultural values to these children and they are losing the opportunity to learn in a welcoming and supportive environment with their peers.

All of this is due to the provisions in Ontario's *Education Act* and the difficulties faced by First Nations in obtaining so-called "reverse tuition agreements."⁶⁴

First Nations schools can only be funded to admit students living off-reserve by making an agreement with the local school board so that the board will flow provincial tuition fees for these students to the First Nations school. Unfortunately, the process of making these agreements can take years and some school boards simply refuse to enter into such agreements.⁶⁵ School boards are not required to enter into these agreements despite the fact that the legislation exists to allow them to do so.

This problem has a particularly large impact on students with special needs. These students cost more to teach and therefore it is more difficult for First Nations schools to admit them without any funding. They are more likely to be turned away and forced to attend a provincial institution. Furthermore, students with special needs are often the ones that would most benefit from the kind of positive and supportive environment in a First Nations school. Requiring formal agreements with school boards as a prerequisite to funding harms our children and hinders our efforts to transmit our cultural values to

⁶⁴ "Reverse tuition agreement" is not a preferred term. They are simply education services agreements.

⁶⁵ Information from First Nations, *supra*. note 43.

many of our children, especially our children with special needs. This needs to change.

There is a simple solution to this problem. In cases where a “reverse tuition agreement” has not been reached, the Ministry of Education could direct funding for off-reserve students enrolled in First Nations schools to the First Nations schools. This could be achieved by a short regulatory amendment. The Ontario Cabinet has the power to do this and could do so in a matter of months.⁶⁶

Formal agreements with school boards should not be a mandatory prerequisite for funding to flow to First Nations schools. The funding should flow automatically like it does in other instances under the *Education Act*. For example, students can attend a school outside the jurisdiction of their local school board if that school is closer to their home (or for other reasons).⁶⁷ When that occurs, the funding automatically follows the student without the need for a special agreement between school boards.⁶⁸ Funding should also automatically follow First Nations students when they attend First Nations schools.

This could be achieved by adding the following two short sections to the grants for student needs regulation (currently O. Reg. 215/16):

72. No fee is payable to a board with respect to a resident pupil of that board if:

a) The pupil has been admitted to a school operated by a First Nation;⁶⁹

⁶⁶ Cabinet has the power under section 11(3) and (4) of the *Education Act* to make the proposed regulation amendments. Those sections read as follows: “(3) Subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations, (a) providing for the circumstances in which a fee is receivable by a board in respect of the provision of education by the board to elementary or secondary school pupils or any class or group of elementary or secondary school pupils; and (b) providing for the method of determining the amount of any fee receivable under clause (a). (4) A regulation made under subsection (3), (b) may prescribe the maximum amount of any fee that may be charged and may provide for the determination of fees by boards.

⁶⁷ *Education Act*, R.S.O. 1990, c. E.2, ss. 35 (1) & 39

⁶⁸ *Ibid.*, ss. 35 (2) & 49

⁶⁹ The *Education Act* uses the phrase “school for Indian children operated by a band, council of a band or an education authority where the band, council of the band or education authority is authorized by the Crown in right of Canada to provide education for Indians.”

- b) *No agreement has been entered into with respect to the payment of fees for that pupil under section 185 of the Act; and*
- c) *The First Nation school has provided notice to the Minister that the pupil has been admitted.*

73. With respect to a pupil and school referred to in section 72, the Minister shall pay to the governing authority of the school an amount equal to the cost per pupil for instruction for the 2016-2017 fiscal period in the school to which the child is admitted unless the Minister and governing authority agree on a different amount.

In addition to this regulatory change, there would need to be a straightforward process to access this funding that is clearly communicated to First Nations.

Recommendation 16: That the Ontario Ministry of Education direct tuition funding for students who reside off-reserve and who wish to attend or are attending a First Nations school to the First Nations school if no agreement has been reached for a school board to flow funds to the First Nations school, and to amend education regulations to allow this if necessary.

Special Education in Northern and Isolated First Nations

Northern and isolated First Nations face massive challenges with respect to special education. Costs are extremely high, special education professionals are scarce, and the needs are great. The difficulties cannot be overstated.

Increased Funding

First and foremost, northern and isolated First Nations need enough funding to cover the actual costs of delivering high quality special education services. These costs can be very high. For example, assessments and services by specialists such as speech-language pathologists can require thousands of dollars in flights and hotel costs, plus significant additional fees to cover travel time. Travel is also often required for students and their parents to attend appointments. These kinds of additional costs must be factored into the funding model. Currently they are not.

Recommendation 17: That funding levels for northern, remote and isolated First Nations reflect the actual costs of providing high quality special education

services based on actual needs, including funding for special costs faced by these First Nations (e.g. travel for professionals, students and parents/guardians, shipping costs for materials and supplies, etc.) and that these considerations be directly and explicitly addressed in the development of any funding model.

Qualified Special Education Staff and Specialists

There is a major shortage of qualified special education staff in the north, such as special education resource teachers, educational assistants, paraprofessionals, psychologists, speech-language pathologists, and occupational therapists. Even when funding is available, it is often difficult to obtain qualified staff or services from consultants.

One potential partial solution is to train more local community members in these positions. This is a good option because local community members are more likely to stay for the long-term and are better able to pass on cultural values and traditions. However, it can be difficult for local community members to leave home and their families to attend university or college down south. Therefore, we recommend that First Nations organizations and institutions be funded to work with Aboriginal Institutes, colleges and universities to deliver educational programs in remote and isolated First Nations and by distance learning. The programs would be geared toward local community members obtaining qualifications to become special education resource teachers, educational assistants, paraprofessionals, psychologists, speech-language pathologists, and occupational therapists.

For further details see the section on access to special education staff and specialists at page 50 below.

Housing

Even if funding is available for salaries, it is sometimes impossible to hire special education staff or bring in specialists due to a lack of housing.

Recommendation 18: That funding for teacher housing (i.e. teacherages) should be sufficient to provide adequate housing for special education staff, especially in remote and isolated communities where the housing shortage continues to impact the housing options available.

Support for First Nations Organizations

There are special opportunities for First Nations institutions and organizations to assist First Nations in the delivery of special education services in the north. It is a major asset to have specialists on staff who are familiar with member First Nations and who are ready to travel. As noted above, this is already being done by Keewaytinook Okimakanak Board of Education (“KOBE”) and the Kwayaciiwin Education Resource Centre (“KERC”). Special support and funding should be provided to assist with these kinds of initiatives.

Recommendation 19: That special support and funding be provided to assist with capacity development and institution building for First Nation organizations in relation to special education for northern and isolated communities.

Access to Special Education Staff and Specialists

Access to special education staff and specialists is a huge problem for First Nations across the province, especially in northern and isolated communities. Even if funding for salaries is available, First Nations routinely cannot find qualified personnel. Additional funding and resources are needed to train our local members, especially through programs that do not require moving off-reserve (e.g. distance learning).

The Aboriginal Institutes have a major potential role to play in improving access.⁷⁰ The Aboriginal Institutes are post-secondary education and training institutes that often partner with colleges and universities to develop and deliver post-secondary programs. The Aboriginal Institutes have already done work in this area but they would require more resources to expand their ability to develop and deliver programs in this area.

In addition to increased funding, the guidelines for INAC’s Post-Secondary Partnerships Program need to be reviewed to ensure that projects relating to special education staff and specialists would satisfy the assessment criteria (particularly regarding labour market need) and would be provided with

⁷⁰ Examples of the Aboriginal Institutes include the Anishinabek Education Institute, First Nations Technical Institute, Kenjgewin Teg Educational Institute, Iohahi:io Akwesasne Adult Education Centre, Oshki Pimache-O-Win Education and Training Institute, Ogwehoweh Skills and Trades Training Centre, Seven Generations Education Institute, Shingwauk Kinooomaage Gamig, and the Six Nations Polytechnic.

sufficient funding. Detailed recommendations regarding this program are beyond the scope of this report but should be considered further.

Recommendation 20: That the federal government increase funding to First Nations organizations and Aboriginal Institutes to develop and deliver programs for local community members to obtain qualifications to become special education staff and specialists, including the development of specific targets (e.g. re graduation numbers, percent of on-reserve positions filled by graduates, etc.). This is required throughout the province, but a special focus on on-reserve and distance learning for members of remote and isolated First Nations is needed. Funding should be available to the Aboriginal Institutes and other organizations.

Recommendation 21: That the Ministry of Advanced Education and Skills Development continue to increase its financial and other support for Aboriginal Institutes and other First Nations organizations developing and delivering post-secondary programs for special education staff and specialists.

Early Childhood Education and Program Coordination

Early childhood education is extremely important, including early special needs identification, assessment, and intervention. For children with special needs, it can be very valuable to screen for special needs at a very young age and provide extra support if necessary. With screening and simple observation in pre-school programs, all children entering kindergarten would already have received support and their needs would already have been identified. This would prevent lost opportunities and “lag time” for children needing more support.

Unfortunately, this is not happening for many First Nations children in Ontario because there is no comprehensive program for early childhood education for pre-school age children. Instead, services for pre-school age children are provided by a patchwork of non-comprehensive programs, including the “head start” program funded by Health Canada and daycare programs funded under the 1965 Agreement. These programs reach only a fraction of First Nations children.⁷¹ This means that early screening and intervention is not happening for most First Nations children.

⁷¹ Chiefs of Ontario, *Ontario First Nations Early Learning Asset Mapping Project: Addendum to Final Report*, April 21, 2015, p. 14.

There are many problems with the current program patchwork:

- a) Many First Nations children do not have pre-school education options or opportunities open to them.
- b) It is a challenge for First Nations to access multiple different “pots” of money.
- c) First Nations’ resources are wasted in applying for and administering multiple sources of funding.
- d) It takes too much time for First Nations administrators to learn about each funding stream, which makes turnover a bigger challenge.
- e) Gaps inevitably exist between the different streams of funding.

We have recommended a change that will somewhat help the situation, which is to allow funding under the special education program to be spent on children under 4 (see Recommendation 7 above). However, this will not solve the underlying problem and much more is needed.

The federal government’s First Nations early childhood education programs need to be improved, to have a more comprehensive reach, and to be better coordinated with other education programs. One option is to bring early childhood education out of health and into education, as was done in the province. This would allow for much more streamlined funding. However, this would also have other impacts that are beyond the scope of this review (e.g. processes to ensure that all components of early childhood services are available, including services traditionally considered to be in the health area, such as dentistry, audiology, optometry, etc.). Regardless, this and other options to improve early childhood education need to be examined to improve the special education services for First Nations children.

Recommendation 22: That programs for First Nations early childhood education be improved so that they are comprehensive, easy to access, available to all First Nations children, and seamlessly coordinated with other education programs.

Children with special needs require a broad range of support *outside* the classroom. These supports can sometimes be accessed from other agencies and departments. Unfortunately, funding for these kinds of services is often insufficient, too difficult to access, insufficiently publicized, and uncoordinated.

The problems that exist are similar to those relating to early childhood education (discussed above).

Outside the classroom support includes before and after school programs, respite care, home care, and summer programs. These activities are partly funded by Health Canada and other agencies. Parents of children with high needs may also require home renovations (e.g. for wheelchair accessibility).

Funding, coordination, and access to these kinds of programs must be improved.

Recommendation 23: That programs for outside-the-classroom support for First Nations children with special needs be improved so that they are comprehensive, easy to access, available to all First Nations children, and seamlessly coordinated with each other. This includes, but is not limited to, case management, before and after school programs, respite care, home care, summer programs, and home renovations for accessibility.

The existence of a patchwork of programs makes it difficult or impossible to hold any one government or agency responsible when services are delayed or denied. Each funder can point to the other, saying that the First Nation should have applied elsewhere. This cannot continue and is contrary to Jordan's Principle.

Recommendation 24: That INAC provide funding for a First Nations-led working group to assess options regarding the coordination and potential consolidation of federal and provincial government programs for First Nations students with special needs.

Goals of this review could include improving access to programs and services, clarifying responsibilities, and eliminating gaps between programs (e.g. by potentially bringing early childhood education out of the health stream and into education, as was done in the province). INAC, Health Canada, the Ontario Ministry of Education, the Ontario Ministry of Health and Long-term Care, and any other government agencies involved in the delivery of services for First Nations children living on reserve should participate in this review.

Facilities, Reporting, & Funding Cycle

Facilities

Insufficient facilities are a major impediment to First Nations being able to provide high quality special education services on-reserve. First Nations currently face both a lack of facilities as well as facilities in disrepair (e.g. black mould, air and water quality problems, below-standard construction, overuse of portables, etc.). Sufficient funding must be available for adequate classroom space, accessible bathrooms, lifts, hoists, and so on. Facilities must also be available for early childhood education so that special needs can be identified and addressed as early as possible. These items are addressed in Recommendation 4 regarding adequacy of funding levels.

The need for facilities for children with special needs is in addition to the massive deficiencies in First Nations schools at the heart of *Shannen's Dream* for safe and comfy schools.⁷² The Parliamentary Budget Officer estimated that those needs require over \$2 billion in initial funding plus far more ongoing annual capital and operations funding than planned.⁷³

It is extremely important that on-reserve schools receive adequate funding for facilities. If they do not, First Nations children with special needs will need to be sent off-reserve. This is a major problem. It means that those children will lose an opportunity to learn in their community with their peers and in a culturally supportive environment. It also means that our other children will lose the opportunity to socialize with our children with special needs – a loss for the school and the entire community.

Because adequate facilities are needed for us to teach our traditions and culture to our children with special needs, the thresholds for approval of capital funding must be much lower for on-reserve schools compared to provincial schools. For example, while a certain number of children may be required to justify building a sensory room in a provincial school, a much lower threshold should exist for an on-reserve school. Otherwise too many of our students will be separated from their peers and our cultural traditions and practices.

⁷² <https://fncaringsociety.com/shannens-dream>.

⁷³ Office of the Parliamentary Budget Officer, *The Funding Requirement for First Nations Schools in Canada*, May 25, 2009.

Data Collection, Reporting, and Access to INAC Data

The reporting and data collection system under the special education program needs an overhaul. The reports are confusing and take far too long to complete.⁷⁴ The data is not verified. Very little data analysis is done. Most importantly, data is not freely provided to First Nations organizations and funding is not provided for First Nations organizations to analyze and use the data. The current system is a waste of time and huge lost opportunity.⁷⁵

To provide some examples of the reporting burdens, First Nations must complete a major report in May. This is done in a PDF. The fields are often not flexible enough to describe many unique situations, causing frustration to administrators. Nor are the fields pre-populated with last year's data, which would save significant amounts of time. In addition, students are identified by number, not name, which requires First Nations to continually cross-check to confirm which number corresponds to which name. This special education report is separate from the nominal roll report due at the end of the year even though there is significant overlap between the two.

In comparison, provincial data collection systems are integrated with the administration programs used by schools. Much of the data can be reported with little more than the click of a button.

Data collection is important. It is one of the ways to ensure that we are closing the education and financial gaps and achieving our other goals. We need data to help us fight for adequate funding and to know where to focus our efforts. We are spending large amounts of time on reporting but not reaping any of the benefits because we cannot easily access the aggregate data, we do not control the data that is collected, and we do not have the capacity to review this data. Good data collection requires:

- a) Streamlined, efficient, flexible, and easy to understand data collection methods (e.g. forms, etc.)
- b) Procedures to verify that the data is accurate;
- c) Procedures to analyze and use the data and sufficient funding and resources to do so; and

⁷⁴ Information from First Nations, *supra*. note 43; see also, generally, Auditor General of Canada, *2011 Status Report to the House of Commons*, ch. 4, pp. 4, & 30-36.

⁷⁵ Information from First Nations, *supra*. note 43.

- d) Good metrics that correspond to key goals, such as closing the education gaps.

Designing a data collection system is beyond the scope of this report. In addition, the data collection for the special education program would need to be overhauled as part of an overhaul of the data collection system for the entire education area. However, we do recommend a fundamental shift: data collection should be led by First Nations for use by First Nations based on the principles of OCAP (Ownership, Control, Access and Possession). We should be funded to redesign this system so that we can use it to make sure that we are achieving our goals.

Recommendation 25: That INAC provide First Nations organizations with funding to participate in the design of a new data collection system, to implement that system, and to analyze and use the data collected in that system based on OCAP principles.

Recommendation 26: That INAC assist in the creation of a new data collection system for the special education program that is: (a) designed and implemented by First Nations; (b) streamlined, efficient, and flexible for First Nations administrators; (c) accurate; (d) centered around key outcomes, such as closing the education gaps; (e) coordinated with other reporting and data collection instruments; (f) tied to mechanisms to bring about improvements to programs and services; and (g) under First Nations administration and control.

Funding Cycle

The funding cycle for the special education program is not aligned to the school year. The funding year starts April 1st, seven months into the school year. Schools need to hold back enough funding to cover the first 7 months of the next school year without knowing how many students they will have with special needs that year. It is also a challenge in budgeting and tracking expenses to have one school year funded 7/12^{ths} in one fiscal year and 5/12^{ths} in the next fiscal year.

Two recommendations made above will help with this problem:

- a) Allowing First Nations to carry over funding will eliminate the need to spend funds by an arbitrary deadline that is in the middle of the school year (i.e. March 31). See Recommendation 5 above.

- b) Providing additional application-based funding for students with very high costs will help with the budgeting and planning challenges associated with the misaligned dates. See Recommendation 6 above.

Although it would be ideal to have funding flow based on the school year, this could be problematic for First Nations operating on a March 31st year end. However, this issue could be considered further as part of the design of a new funding model.

Implementation Target Dates

It is critical that the necessary reforms happen quickly. These problems have been known for many decades. We must seize the momentum created by the commitments made by both the federal and provincial governments. The longer we wait, the worse the situation gets and the harder the challenges become. Each year that goes by without resolving these issues we have failed another class of our children.

Recommendation 27: That implementation occur by the following target dates:

- Prior to the 2017-2018 school year for recommendations regarding policy or regulatory changes (#s 1, 2, 7, 9, & 11-16);
- Prior to the 2018-2019 school year for the creation of a new funding model and new reporting system (#s 3-6, 8, 10, 17-19, & 25-26);
- During this fiscal year for additional funding to flow for First Nations organizations to develop and deliver programs to train special education staff and specialists, with target timelines to meet specific targets to be determined by the relevant First Nations organizations (#s 20 & 21); and
- Prior to March 31, 2018 for the completion of a First Nations-led proposal regarding the consolidation and coordination of federal/provincial special education programs and March 31, 2019 for the implementation of that proposal (#s 22-24).

Conclusion

This report includes recommendations that will be a challenge for the federal government, such as providing funding that is *guaranteed* and based on need, not based on yearly budgets and Treasury Board decisions. This requires a fundamental shift in the way the federal government runs its program for First Nations education. The recommendations for the provincial government are

less challenging, but still require action to be taken, including amendments to regulations.

For government officials looking at some of these recommendations, it is important to remember why the education gaps are so large and why the current system is so flawed. An entire generation of our children were taken from us, abused, and taught to hate themselves and their culture in residential schools. This and other racist and assimilationist policies created the education gaps we are now trying to fix.

In addition, our land was taken from us, we were relegated to reserves, and we were forced into a system of band governance under the *Indian Act*, followed by decades of neglect and underfunding. Indeed, many colonial approaches continue to result in systemic racism. This is why the system is so broken.

After all that has happened, it is no surprise that major reforms are needed. After all that the governments have done to cause the education gaps, they cannot now say that these kinds of sweeping reforms are too difficult or expensive.

Without reforms, more First Nations children will be taken from their homes. First Nations children are more likely to be taken away from their parents by children's aid societies if they have special needs because their needs are harder to meet and insufficient resources are available for these children and their parents. Parents are sometimes even encouraged to put their children into care or involve children's aid societies in other ways just to ensure that their children get the care they need.

In addition, the reforms necessary to achieve substantive equality are required by our inherent rights, our Treaties, the principle of equality as enshrined in Canadian law, and international law and agreements. First Nations children are legally entitled to a good education and to substantive equality, which requires reforms to ensure that First Nations children achieve at least the same levels of success in school as other Canadian children.⁷⁶ Most importantly, this is the right thing to do and this is what this new government has promised to do.

We close with these comments from *Our Children, Our Vision, Our Future*, which still apply today:

⁷⁶ *First Nations Child and Family Caring Society of Canada v. Attorney General of Canada*, 2016 CHRT 2.

None of the information presented in this report is new. We have had so many reports, studies and research done on the issue of First Nation education, that it has become nearly impossible to write a new report without sounding identical to all those before it. The disastrous effects of colonial policies imposed on our communities have long been known to federal and provincial officials, clergy of all faiths, academics, researchers, and social scientists. We know the effects more intimately than anyone else because we have lived it. We have seen the slow erosion of our languages, our Indigenous values and beliefs, and our traditional knowledges about our specific territories. We know that if we don't take immediate steps to reverse this trend and undo some of the harm that has been done to our peoples and our traditional knowledge systems, we may lose it forever.⁷⁷

⁷⁷ Chiefs of Ontario, *Our Children, Our Vision, Our Future: First Nation Jurisdiction over First Nation Education in Ontario*, 2012, p. 15

