

CHIEFS OF ONTARIO



Special Education Position Paper

2017

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Rationale for Position

The recommendations outlined in this Position Paper are derived from the results of an evaluation of the federal High Cost Special Education Program (HCSEP) undertaken by the Ontario First Nation Special Education Working Group (OFNSEWG) and a review conducted through the human rights legal challenge on special education launched by the Mississaugas of the New Credit First Nations (MNCFN). This Position Paper was developed under the guidance of the First Nations Education Coordination Unit (FNECU) and the Chiefs Committee on Lifelong Learning (CCOLL).

The HCSEP Evaluation was conducted using a survey tool developed by Chiefs of Ontario to gather input on the current status of special education programming among recipients of this federal program. Information was gathered for the purpose of making recommendations to the Chiefs in Assembly as mandated in *Resolution 12/15 Continued Analysis of Special Education*. A total of 99 communities and organizations throughout Ontario completed the evaluation with one of the regional Special Education Support Technicians. The evaluation identified a far-ranging list of concerns including resource availability, child needs, and barriers resulting from inappropriate/inadequate implementation policy or protocol.

The MNCFN Review comes out of the human rights legal challenge regarding the unequal and inadequate special education services provided to First Nation children living on reserve. The Review recommends improved and increased support from the federal and provincial governments for First Nations children with special needs in Ontario. The recommendations were brought together from previous reports by First Nations organizations, such as the Chiefs of Ontario and the Assembly of First Nations. The Review and the recommendations were also based on interviews and discussions with First Nations educators, community and organization education directors, and administrators from across the province.

The Review was chaired by Peter Garrow, former Education Director of the Assembly of First Nations and former Education Director for Akwesasne. Peter is currently the Chair of the Indigenous Trustee Council of the Ontario Public School Board Association. The Chiefs in Assembly passed *Resolution 13/09 Support for Mississaugas of the New Credit Human Rights Challenge on Special Education* in a display of full support for the legal challenge. Key findings of the HCSEP Evaluation fully support and align with the recommendations of the Review.

Fundamental Principle: First Nations Control Over First Nations Education

First and foremost, the findings of the Review and the Evaluation recommend that First Nations be completely freed from the terms and conditions of Indigenous and Northern Affairs Canada's (INAC) education programs and exercise full and complete control of First Nations Education should they so desire. In the interim, INAC's education programs must be First Nations-led, and must reflect the principle of substantive equality between First Nations children and other Canadian children.

The HCSEP Evaluation responses confirm the highly prescriptive nature of the current federal Special Education program. This prescriptive approach complicates program administration and delivery within our communities. Some of the challenges that First Nations are facing with the administration of Special Education includes; restrictions to provide supports outside the scope of the current guidelines and criteria, delayed funding schedules, and technical complications with INAC reporting requirements. Within the evaluation survey, a high number of responses emphasized the need for full First Nations control in the design of special education programming to better ensure the programs and services meet the unique needs of their learners and communities. The requirement for a tailored approach for learners can only be determined and designed *by* the community itself. Specific options to be considered on a community basis include after-school supports, cultural and traditional healing supports, and home-schooling options.

The pathway to First Nations control of First Nation education also includes disclosure of information from INAC and access to the details of all existing funding formulas and allocation methodologies. Many respondents of the HCSEP Evaluation cited a lack of awareness about how funding is distributed to First Nation communities via the status quo; for example, the need for better understanding about the rationale for indirect versus direct costs. The Evaluation strongly emphasized the lack of clear and transparent communication between First Nations and the federal government, which is uniquely and acutely experienced by First Nations and First Nation organizations.

Funding

The HCSEP Evaluation responses reveal that the need for special education support among First Nation communities is growing. It is therefore imperative that the existing funding mechanisms and program constraints change to elevate the priority of addressing the special education needs of First Nation learners at the same level, at a minimum, as the non-Indigenous population. For example, the funding mechanisms utilized for special education in the Ontario provincial system include increases in salaries and professional development for staff. The provincial mechanism also includes supports such as providing a 3% increase to funding for schools just to be kept open by the community for other community-use purposes. These nuanced supports for the communities and people supporting children with special needs are understood to be essential for success, and have not been a part of education funding design for First Nations.

Education is an inherent and treaty right for First Nations. The federal government is *legally required* to provide funding at adequate and equitable levels. It is therefore recommended, both by the Review and the Evaluation that new funding model be developed in full partnership with First Nations that is needs-based, uncapped, flexible, transparent, stable, predictable, holistic, and indexed to needs.

Overall, funding levels must be increased in a process that ensures *all* needs are met. The Evaluation also confirms a significant need for capital and infrastructure funding for First Nations to ensure access to appropriate facilities, technology, and broadband to support student learning. In line with First Nations control, the funding eligibility criteria must be expanded so that First Nations can direct these funds to where they are needed the most to support learners.

The funding recommendation also highlights that First Nations organizations require sufficient funding. These organizations are uniquely positioned to provide opportunities for additional external support, such as specialist services that are responsive to First Nations needs and the unique circumstances of communities. The HCSEP Evaluation highlighted the need for support on policy development and relationship building, which can be also drawn from the supporting capacity of First Nations organizations. It is important to note that the funding mechanisms for organizations cannot take away from the essential funding needed by First Nations, and if First Nations want to direct funds to a First Nation organization there must be a simple process in the design of a funding mechanism for this.

Provincial Education Practices and Regulations

Many students will interface with the provincial education system at some point along their lifelong learning path. The transitions they experience to and from provincial boards and schools must not detract from student success. The Review recommends that the provincial government provide better overall support for First Nations children with special needs attending provincial schools. Ultimately, public school boards need to be culturally responsive to better meet the needs of First Nation learners. The lack of consistent and clear communication between schools, school boards and First Nations identified in the HCSEP Evaluation intensifies these issues of inadequate provincial support. It is therefore recommended that the province work in partnership with First Nations to address these shortcomings through developing appropriate policy and regulations.

Funding and Tuition Agreements

The Review recommends that provincial regulations be changed to prevent school boards from overcharging First Nations for special education services and to require that First Nations students with special needs be treated equitably in provincial schools. In the HCSEP Evaluation, two-thirds of students who require special education by the provincial school board do not see these supports reflected in the student experience. Furthermore, First Nation communities see a strong need for formal and accountable education services (tuition) agreements which includes a protocol with provincial school boards to ensure that staff of First Nations housed in provincial schools are treated respectfully and equally by provincial school administrators. This protocol would also ensure that First Nations communities are respective partners with the school boards on decision making matters for program and service delivery regarding First Nation children.

The HCSEP Evaluation revealed that many education services (tuition) agreements can be decades old without clear and continuous mechanisms that support accountability to First Nations. These agreements must be fair and reflect the actual costs of program delivery. Finally, First Nations schools **must** receive tuition funding from the Ministry of Education for First Nation students that live off-reserve to ensure First Nation schools and students have access to resources and programs that are comparable with the province.

Northern, Remote, and/or Isolated Circumstances

The needs of northern, remote, and isolated First Nations must be directly and explicitly addressed in the development of unique funding models pertaining to northern and remote circumstances. The Review recommends far greater support and funding for northern, remote, and isolated First Nations, and insists the funding levels must reflect actual costs and needs. The HCSEP Evaluation also highlighted the priorities and unique needs of northern and remote communities with an emphasis on transportation, professional development, capacity building and accessing and retaining local professionals who are best suited to serve the needs of the community.

Northern, remote and isolated communities require additional funding for teacher all education needs. A special focus is needed to provide on-reserve training and courses for community members to become special education staff and specialists. Often times, staff are overloaded with multiple roles and require additional support and resources. This is particularly relevant in the north where there are unique barriers to attracting and retaining skilled workers, including limited housing, low teacher wages, and a large supply of contract-based work.

Special Education Staff, Specialists, and Support

Results from the HCSEP Evaluation emphasize the importance of knowledge sharing and knowledge development for teachers and staff who are best positioned to serve First Nations learners. The Review recommends that additional funding and support is needed to assist First Nations people with gaining the necessary skills to effectively work as special education staff and specialists, including funding and support for the Aboriginal Institutes and other First Nations organizations. The additional capacity funding for First Nation organizations is intended to help First Nations that cannot find qualified special education staff and specialists.

For First Nations educators, an exclusively digital approach to professional development and support is not enough. While using technology like Skype to provide continuous professional development opportunities is helpful, some communities face limited access to broadband and in-person support was highlighted as most desirable and effective across regions. The COO Special Education Support Technicians were highlighted in the Evaluation as particularly helpful in providing in-person support from a perspective of local familiarity and in-depth knowledge and expertise in INAC programming and funding.

Early Childhood and Access to Services

The Review highlights the importance of early childhood education and special needs health services for children with special needs. Although the details of those programs are beyond the scope of the Review, it recommends that those programs be improved so that they are comprehensive, easy to access, coordinated, and available to all First Nation children. It also recommends First Nations-led study processes into coordination and potential consolidation of government programs supporting First Nations children with special needs and into improved data collection systems that are under First Nations administration and control.

The opportunity and resources to provide mental health and early childhood supports were revealed in the Evaluation as lying outside the current scope of eligible programming, but critical to the success of First Nations children with special needs. The Evaluation also demonstrated that there is a significant need for assessments. Since assessments and data are so critical to knowing what is effective and what areas need to be improved, the question of data ownership and First Nations control over that data must be explicitly determined as that need for assessments is met.

Helping our Children

Finally, the report recommends an ambitious timeline for implementing the recommendations with targets aimed at benefiting students as soon as possible (i.e. by the start of the next school year or at least prior to start of the following school year).

Evidence of increasing numbers of students requiring special education is the most significant factor in making special education programming and funding reforms urgent. Changing the currently inadequate mechanisms is a requirement to stop putting First Nations children at a disadvantage. The provincial education funding mechanism responds to the needs of its citizens through providing resources for local control, improving infrastructure, general enhancements, class size management, and salary protections and enhancements that create a well-supported learning system for students with special needs. While progress on supporting students with special needs in the provincial system still needs to be made, this fundamental approach to matching the needs of the students and communities is not matched by the federal government in First Nations communities. The solutions and path forward to improving special education are clearly known and identified by First Nations communities, and it is imperative

that these solutions are realized to end the unnecessary complications and barriers of those most affected: First Nations children.

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;

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- (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;
- (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

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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

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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

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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:

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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).