

Ontario Ministry of Education
Indian and Northern Affairs Canada
"First Nations Education Funding: Tuition Agreements and Special Education"
Resource Package
October 2007
Q's & A's

Background Information

How does education funding for First Nations work?

In 1867, section 91 (24) of the British North America Act (now the Constitution Act, 1982) assigned overall responsibility for Canada's First Nation peoples and lands to the federal government. At the same time, responsibility for education of non-Native people in Canada was assigned specifically to the provinces under Section 93. The education of Canada's First Nation people who live in a First Nation community remained within the domain of the federal government.

How is education funding for First Nations managed in Ontario?

The federal government retains financial responsibility for the education of First Nations people who reside in First Nation communities. Indian and Northern Affairs Canada (INAC) has a regional office in each province. The Ontario INAC office develops funding guidelines based on federal requirements. Each of the 134 First Nation communities in Ontario has an agreement with INAC Ontario. Transfer payments for all programs are made to the First Nation. Programs offered on reserve are then managed locally by the First Nation. Education is one of those programs.

Are all First Nations students provided for through the federal processes?

First Nations education funding is determined by place of residence. The federal government has funding responsibility for registered First Nations students who live in a First Nations community (on-reserve). First Nations students who live off reserve fall within the funding jurisdiction of the province. Students who live on reserve and attend school off reserve are funded through tuition agreements.

What types of schooling are available for on-reserve students?

Most First Nations communities operate elementary schools and some operate secondary schools. The First Nation controls all aspects of the administration of their own education systems. Most First Nations schools follow the Ontario Curriculum, enhanced by culturally enriched programming.

Also in Ontario, Indian and Northern Affairs Canada directly operates six federal schools in Ontario – Quinte Mohawk School in Tyendinaga; I.L. Thomas, Jamieson Elementary, Emily C. General, J.C. Hill School, Oliver M. Smith in Six Nations. INAC directly pays cost of operating.

In some First Nations communities that operate schools, dependent upon local education policy, students may have the option of attending provincially funded schools.

Where there is no school in the community, First Nations purchase educational services from a school board. Thirty per cent of Ontario First Nations students attend provincially funded schools.

Federal First Nations Funding

Who is eligible for federal funding?

The student must be resident on-reserve, eligible to be included on the nominal roll, and attending a federal, provincial, or band-operated or private school that is recognized by the province, and between the ages of six to twenty-one inclusive. Resource: Indian Affairs Education Program Guidelines

The First Nation may provide services for non-resident students at its discretion and within its own resources.

What does the federal funding structure look like?

First Nation schools are funded as follow:

Basic - amount determined by the number of students

Targeted – program funding with specific terms and conditions i.e. National First Nations Special Education Program (SEP)

Initiative – to enhance existing operations

First Nations are funded for their students attending provincially-funded schools as follows:

Basic - INAC Ontario transfers per-pupil amount to First Nations based on specific board information and specific First Nation nominal roll information

Targeted – INAC Ontario transfers SEP funding to First Nation based on nominal roll information; INAC Ontario has some high cost funding accessible by application *this will change in April 2007

What kinds of programs are funded by “initiative funding?”

An accountable program that enhances the education services to First Nations students. Some examples are curriculum development projects, educational research and student academic services programs.

Are provincial school boards able to access initiative funding?

Only First Nations may apply for this funding.

Has there been an increase in federal funding to First Nations over the past ten years?

Yes. When tuition fees increase, federal funding to First Nations is provided to meet this increase. INAC confirms this response

Provincial Funding Structure

How are boards funded in general?

Complete information can be accessed at

English - <http://www.edu.gov.on.ca/eng/funding/0708/>

French - <http://www.edu.gov.on.ca/fre/policyfunding/funding.html>

What are some examples of funding that boards receive outside of the Grants for Student Needs (GSN)?

Additional funding has been provided for various initiatives. Some examples are: Literacy and Numeracy – Ontario Focused Intervention Partnership Strategy, Student Success/Learning to 18, Parental Engagement, Council of Ontario Directors of Education (CODE) Special Education, Tutors in the Classroom, Funding for Assessments, Model Projects to Promote Positive Student Behaviour, Investment in Junior Grades Student Learning Resources and Materials, Schools on the Move: Lighthouse Program, Healthy Schools – Funding for Secondary Student Engagement, Funding for Arts Education, CODE Aboriginal Education, New Teacher Induction Program.

Are tuition fee students included in programs that are funded outside of the GSN?

Some boards consider the provision of certain programs for which they have received funding for pupils of the board, as requiring additional cost. An example of this might be a special grant for textbooks. For broader initiatives there would likely not be an additional charge. The Ontario regulation Calculation of Fee for Pupils” provides for the billing of additional costs.

Tuition Agreements

What is involved for students residing in a First Nations community to attend provincially funded schools?

The First Nation may enter into an agreement with the school board. These agreements are generally known as “tuition agreements” or “education services agreements.” A tuition agreement is a legal and binding agreement between a school board and a First Nation and is provided for under provincial and federal legislation.

What is the pertinent legislation?

First Nation legislation is the Indian Act. Provincial legislation is Section 188 of the Education Act. The calculation for the per-pupil rate is outlined in a regulation made pursuant to the Education Act. The actual regulation number changes each year. This regulation is used to calculate the costs for "other pupils."

What does the term "other pupils" mean?

The legislation makes two distinctions between pupils. Those formerly referred to as "resident" students are now referred to as "pupils of the board." Students paying tuition fees were formerly referred to as "non-resident" and are now "other pupils."

Who develops and oversees tuition agreements?

Prior to 1994, Indian and Northern Affairs Canada (INAC) was often directly involved in the development of agreements with school boards to ensure the education of First Nations students who were residents of a First Nations community. After 1994 the federal government generally withdrew from participation in this process. Most First Nations have since been developing and negotiating agreements directly with school boards. INAC is directly involved in the tuition agreement process with only a small number of First Nations.

Is there one standard agreement?

In Ontario, many First Nations have developed agreements unique to their community and situation. While all agreements contain similar components, they are quite different. Individual First Nation communities develop their own agreements and their own working relationships with school boards. A single board may have different agreements with two or more First Nations. A single board may also have one agreement with two or more First Nations. It is between individual First Nations and boards to decide what kind of agreement they will have.

Are programs and services negotiable?

Boards and First Nations discuss what programs and services are needed/required/desired beyond what is covered in the per-pupil amount. Some services may require additional funding such as specific special education programs and services, Native Languages, Native Studies, counselling. Programs and services are negotiable, based on the funding available to the First Nation.

Can a board provide special services specifically for the tuition-fee paying students?

Section 188 of the Education Act states that a board may provide special services where the First Nation agrees to provide additional funding for such services as specified in the tuition agreement with the board.

What is a reverse tuition agreement?

Where a First Nation provides funds to a board for on-reserve students attending board schools, and a board provides funds to the same First Nation for board pupils attending the First Nation school, an agreement should be in place that outlines programs and services that each party will provide, and how funding will be exchanged.

The provincial legislation reference for the Sub-section 188(1) of the Education Act and Section 63 of Ontario Regulation 152/07, (Grants for Student Needs).

Can reverse tuition agreements be entered into for council-operated schools off the First Nation?

Currently, provincial legislation provides for reverse tuition agreements at the elementary level and secondary level; however the legislation only provides reimbursement to boards for elementary pupils attending First Nation schools.

For what type of pupils are school boards required to charge tuition fees for day school and continuing education/summer programs?

School boards shall charge tuition fees to:

- i. Pupils to whom subsection 49(6) of the Education Act applies (persons with temporary resident status or who possess a study permit) unless these pupils are exempt under subsection 49(7) of the Act. The tuition fees charged by the boards in respect of day school programs may be whatever the board determines, but shall not be less than the amount calculated in the Calculation of Fees for Pupils Regulation. Similarly, tuition fees for continuing education and summer school programs for such pupils may be whatever the board determines, but shall not be less than the amount calculated in the Calculation of Fees for Pupils Regulation.

For more information go to the Questions and Answers for the Amendments to Subsection 49(7) of the [Education Act](#).

- ii. Native pupils who reside on a reserve. Boards may enter into agreements, but the fee charged under the agreements for day school programs **shall** be the amount determined in accordance with the Calculation of Fees for Pupils Regulation. Tuition fees with respect to continuing education and summer school for such pupils may be an amount agreed upon by the board and the person paying the fee, or in the absence of an agreement, shall be the amount calculated in accordance with the Calculation of Fees for Pupils Regulation.

It should be noted that in addition to the fees referred to above, boards shall charge for special services as set out in sub-section 188(4) of the Act.

School boards **may** charge tuition fees to:

- iii. Pupils whose parents or guardians do not reside in Ontario. The amount of the fee charged by the board for day school programs may be whatever the board determines, but shall not exceed the maximum determined in accordance with the Calculation of Fees for Pupils Regulation. Tuition fees with respect to continuing education and summer school for such pupils may be an amount agreed upon by the board and the person paying the fee, or in the absence of an agreement, shall be the amount calculated in accordance with the Calculation of Fees for Pupils Regulation.
- iv. Pupils who reside in a school section, separate school zone or secondary school district in which the pupil's parent or guardian resides, on land that is exempt from taxation for the purposes of any board. The amount charged shall be \$40 for each month or part of a month the pupil attends a board school. The board is not permitted to charge a monthly fee in respect of additional pupils from the same family.

Note: for pupils identified in (i), (ii) or (iii), boards are not to report these pupils as "pupils of the board" for funding purposes.

<http://tpfr.edu.gov.on.ca/Q's&A'sfees.htm>

Tuition Agreement Fees

Is the per pupil fee the same for every board?

The fee calculation is outlined in the Calculation of Fees for Pupils regulation. The fee is different for each board. Tuition fees are related to the funding that boards receive through the Grants for Student Needs (GSN). The GSN is determined by a set of variables for each board.

Why have the tuition fees risen?

Tuition fees are based on the board's funding. Funding through the Grants for Student Needs to boards has risen. This directly affects the tuition calculation. From 2001-02 to 2006-07, per pupil funding has gone up 29 percent on average. It is much higher for some boards particularly in the north and for School Authorities.

Is the per-pupil amount for "other pupils" equivalent to the per pupil amount through the GSN that boards receive for "pupils of the board?"

The per-pupil amount for "other pupils" derived from the calculation found within the Regulation does not equate exactly with the grants that boards receive. The calculation uses the total amount of funding to the board through most of the grants, including four components of Special Education funding, to determine the per-pupil amount for "other pupils."

Is transportation included in the base tuition fee?

Transportation is not included. First Nations receive funding for transportation through INAC transfers. Some First Nation communities run their own buses.

Is a "high cost" program always a Special Education program?

The Calculation of Fees for Pupils regulation outlines that a "high cost" program may mean a "special education" program. A high cost program may also mean a technical program. Boards and First Nations, in their tuition agreements, generally make provisions to address specific cases of "high cost" should they arise. These specific terms are then outlined in the agreement.

**see also section on Special Education*

How does a First Nation receive funding to cover additional fees that may be charged?

First Nations receive education funding through a federal transfer. Actual tuition amounts are transferred. Special Education funding is determined by a formula. Funding for additional costing is through First Nation local processes.

Do all First Nations pay the Pupil Accommodation Charge?

Yes. Some First Nations have contributed to the building of school facilities in the past.

How does billing to the First Nation occur?

The tuition agreement outlines the terms of reporting and invoicing. Both parties will have agreed upon these timelines and practices. Boards and First Nations verify the number of tuition-fee students as of the October 31st and March 31st count dates.

What happens if a tuition- fee student drops out in November?

That student would have been counted on the October 31st roll and billed for half a year's tuition in compliance with the Tuition Fee Regulation (O.Reg. 151/07). The board adjusts its billing based on the numbers for the March 31st count date. First Nations are responsible for monitoring and verifying student enrolment.

Can a board bill the First Nation for past years?

The board provides its audited financial statement in December for the past school year. The board will make final adjustments to that school year's billing based on Appendix B information those financial statements. Many boards report on billing to First Nations in a note to their financial statements. At this point that year's business is usually considered final.

Special Education

What are some of the provincial programs and services pertinent to Special Education that are part of the GSN and also included in the per pupil amount calculated for "other pupils?"

Foundation (from the list of components of the foundation grant)

Classroom teachers
Education assistants
Textbooks and learning materials
Classroom supplies
Classroom computers
Library and guidance services
Professional and paraprofessional services
Classroom consultants

Special Education

1. Special Education Per Pupil Amount (SEPPA) - Educational assistants, Student assessments, Instructional materials, consultants
2. High Needs Amount (HNA)
3. Special Equipment Amount (SEA)
4. Special Incidence Portion (SIP)

Learning Opportunities

Demographic Component
Student Success

Does the tuition amount allow for sufficient funding to serve First Nation special needs students through the funding processes?

Generally Special Education programs and services for First Nation students attending under a tuition agreement can be provided for within the per-pupil amount and through board special education processes. However, where the proportion of First Nation tuition-fee students requiring Special Education programs and services is significantly higher than those of pupils of the board, additional funding may be needed.

Will high needs funding to boards continue to rise?

"The reported incidence rate of high-needs students doubled between 2001 and 2004...During the same period claims for the Intensive Support Amount funding doubled, despite the fact that enrolment declined overall." (Special Education Transformation). Beginning in September 2006, the claims process is replaced by a High Needs component of the Special Education Grant. For the 2007-08 school year a stabilization approach was used for the High Needs Amount (HNA) such that boards with increasing enrolment received increased HNA funding while boards with decreasing enrolment received the same HNA funding as in 2005-06.

With a new approach to Special Education, boards will focus more on including special education as an integral part of their strategy towards improving student achievement.

The Special Education Transformation report recommends a "simpler, streamlined funding process that provides protected special education funds that flow to boards in a predictable manner." (p.31)

What are some examples of "high cost" that would not be covered within the per pupil amount?

Additional costs for special education programs and services are linked to the total number of First Nations students enrolled under one tuition agreement. The per pupil amount for *all* tuition-fee paying students includes amounts for special education programs and services. This generates a total special education amount that is similar to the amount that is generated for pupils of the board.

Where the board and the First Nation agree that the programs and services required are "high cost", a high-cost factor may be applied. In some cases, actual costs may be utilized i.e. educational assistant.

Examples are any special education programs and services that the board and the First Nation agree are in excess of the amounts generated through the total basic per-pupil amount and that fall within the conditions of the federal First Nations Special Education Program.

How is a Special Education "high cost" amount determined?

Where the board and the First Nation have agreed that the costs for providing special education programs and services for specific students is to be deemed "high cost" -

Special Education Process

1. Student must be identified as exceptional.
2. Identification and placement decisions are outlined in the Identification and Placement Review Committee (IPRC) statement of decision.
**Should it be determined that a formal IPRC is not required (as per recent Special Education practise changes), the First Nation would state its required documentation. This may differ from board requirements.*
3. Programming is determined at the school level. An Individual Education Plan IEP is developed.
4. Program may include the need for an Educational Assistant. *The criteria/practise for determining this need is the same for resident pupils and for First Nation pupils attending under a tuition agreement. Exceptions to this are where the First Nations makes a specific request and will provide the resources to support the request.
5. School makes the request to the board. Allocations are determined through board process.

Board-level funding decision

6. Board personnel review request as per board special education processes. Need(s) is validated.
7. Board personnel review total funding generated by all First Nations students attending under a tuition agreement.
8. If cost exceeds funding generated, an amount may be discussed between the First Nation and the board.
9. An addendum to the tuition agreement is drawn up.

How are the costs determined?

The regulation states that the tuition fee may be increased, at the option of the board, by a factor that both parties agree upon. In some cases, actual costs are agreed upon.

What is a high-cost factor table?

This is a defined method of determining cost beyond the per pupil amount that was generally used prior to the provincial education funding restructuring in 1998.

What is the provincial definition of "high needs?"

Currently the ministry does not have provincial definitions of "high needs". The previous high-needs funding based on individual student claims using Intensive Support Amount (ISA) 2 and 3 criteria/profile was converted to a board-specific per-pupil High Needs Amount (HNA) in 2005-06. The board-specific per-pupil HNA is multiplied by a board's enrolment.

Boards may apply for Special Incidence Portion (SIP) funding for staff support to ensure the health and safety both of students who have extraordinarily high needs related to their disabilities and/or exceptionalities and of others at school.

Special Education – Federal Program

If a student's needs are eligible for Special Education Program (SEP) funding, what are the accountability requirements?

First Nations ensure that boards provide the following information:

- Formal assessment (board/school)
- Formal identification (board)
- IPRC determination (board)
- IEP (school)
- Outline of recommended specific program and service to be provided (school)
- Proposed detailed cost *claim must substantiate costing above the total special education amount provided through tuition fees including equivalent of per pupil funding for high needs already charged by the board

If more funding is required, can the First Nation make an application to INAC?

Beginning in April 2007, all SEP funding will be going directly to First Nations through a formula. The application or claims process will no longer be in effect.

General

Can a school board exclude a student?

Under Section 265 of the *Education Act*, and subject to an appeal to the board, a principal may refuse to admit to the school or classroom a person whose presence into school or classroom would, in the principal's judgement, be detrimental to the physical or mental well-being of the pupils.

Programming decisions are made at the school level. The principal has the duty to determine if there are appropriate resources to safely accommodate the student. Under Section 265, the principal may make the determination that the student cannot be admitted.

Are all Education Assistants subject to collective agreements?

Education Assistants (EA) who are employees of the board may be employed under the terms of a collective agreement. In some cases, the First Nation may provide EA. The terms would be set out in an addendum to a tuition agreement. The terms may state that the EA is an employee of the First Nation. In this case, the terms of employment are different from those EA's who are board employees. In other cases, union agreements may be restrictive or it may be board policy that all EA's must meet the same specified qualifications and operate under the terms of the collective agreements.

Are there sample tuition agreement templates available?

Contact Indian and Northern Affairs – Ontario Region