

Policy Proposal

Transforming First Nations Elementary and Secondary Education

Policy Co-development Team
Assembly of First Nations
National Indian Education Council
Indigenous and Northern Affairs Canada

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SUMMARY OF RECOMMENDATIONS

ISSUE: Whether to authorize the Minister of Indigenous Services (“the Minister”) to take steps to strengthen First Nations elementary and secondary education through regional models that provide sufficient, predictable and sustained funding and support strong student outcomes.

Whether to authorize the Minister to provide funding increases based on existing self-government agreements.

DECISION: It is recommended that the Minister be authorized to:

- 1) Allocate current total reference levels (less self-government funding) and Budget 2016 investments for First Nations elementary and secondary education on a province-by-province basis according to the methodology used to determine funding amounts in Chart XX below, in a move towards sufficient funding while increasing predictable and sustained funding for First Nation communities, schools and students.

CHART 1.0: *(To be filled in after discussions with First Nations on regional interim funding formulas and final allocations for 2018-19 are identified)*

INAC Region (Province)	Allocation of Implementing Transformation Budget	Total Allocation

- 2) Implement an interim funding approach within the provincial allocations identified in Chart 1.0 for 2019-20 that includes:
 - a) interim funding formulas for each region for 2019-20 that use the provincial education funding model as a base to determine allocations, plus adaptations to address the specific needs of First Nations schools and students.
 - b) targeted investments for language and culture programming to ensure all First Nations are receiving \$1,500 per student, and targeted investments to enable all First Nation schools to provide two years of full-time kindergarten programming.
 - c) targeted multi-year funding for First Nation education organizations that support First Nation students, schools and communities;
- 3) Support First Nations and the Department to negotiate and conclude First Nations Education Agreements in each region¹, which will replace the interim funding approach identified in 2) as early as 2019-20. These First Nation Education Agreements will initially be funded based on their regional allocation identified in 1) and a supplementary budget ask will be developed for Federal Budget 2019 to identify the additional funding required to conclude these agreements. These agreements will include:
 - a. new funding formula that will be used to distribute funds within each region in order to support the specific needs of their First Nation communities, schools and students;
 - b. targeted multi-year funding for First Nations regional strategies to strengthen student outcomes;
 - c. targeted multi-year funding for First Nations education organizations.
 - d. defined roles and responsibilities for First Nations education organizations that support First Nations students, schools, and communities; and
 - e. a mutual accountability mechanisms with clear objectives, performance indicators, and reporting expectations;

¹ A region, for the purpose of this document, is defined as any territory which First Nations choose to implement First Nation control of First Nation education and negotiate a regional First Nation Education Agreement. This could include, but not be limited to, a territory defined as a single First Nation, Tribal Council, Treaty affiliation, language family, or an entire province. It is expected that there will be at least 20 regions that will develop their unique regional First Nation Education Agreement. For Treaty First Nations, only Treaty people will speak on behalf of Treaties.

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- 4) Establish, and support on an ongoing basis, regional education technical tables that would:
 - a. Provide a forum for engagement on the implementation of the interim funding approach as per recommendation 2).
 - b. Negotiate and facilitate the approval of the regional First Nation Education Agreements as per recommendation 3).
 - c. Evaluate the funding needs for the regional agreement to ensure the regional allocation provides sufficient, predictable and sustained funding, and where required develop a budget ask that will seek additional investments for the regional First Nation Education Agreements as required.
- 5) Increase funding for 2018-19 to First Nations elementary and secondary recipients through core education programs based on each recipient's estimated allocation as determined by the interim and existing formulas, including those in self-government agreements;
- 6) Increase funding for First Nation in self-government agreements in accordance with the wording of the self-government main agreement and self-government funding agreement.
- 7) Amend current program terms and conditions to implement the recommendations above and to continue a suite of targeted investments that are developed in partnership with First Nations to support collaborative, innovative, and research-based initiatives.

CONTEXT

The Government of Canada is committed to achieving reconciliation with Indigenous peoples through a renewed, nation-to-nation and government-to-government relationship based on recognition of rights, respect, co-operation, and partnership as the foundation for transformative change. The implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* requires transformative change in the Government's relationship with Indigenous peoples. The Government of Canada is working to fulfill this commitment through a review of laws and policies, as well as other collaborative initiatives and actions. The co-development process for developing this proposal is part of an early effort to advance fundamental change. These efforts must be guided by Canada's obligation to respect and uphold First Nations' inherent and Treaty right to education. This work is rooted in section 35, guided by the UN Declaration on the Rights of Indigenous Peoples, and informed by the Report of the Royal Commission on Aboriginal Peoples and the Truth and Reconciliation Commission's Calls to Action. The proposed approach to transformation First Nations education furthers Canada's commitments to supporting a quality education for all First Nations students and to reconciliation as echoed in the 2015 Speech from the Throne, Budget 2016's spending profile, and the 2015 Mandate Letters.

First Nations students have the inherent and Treaty right to receive education that is in accordance with their culture, values, traditions and languages and that is free of prejudice and discrimination. Quality and culturally appropriate education is a cornerstone to the preservation and vitality of First Nations societies and to the realization of other fundamental human rights of First Nations students. First Nations students require special measures in order to enjoy their right to education on an equal footing with other Canadian students. This includes the right to equitable funding that meets their specific needs and circumstances, taking into account First Nations children's cultural, linguistic and geographical needs and historical realities. A strategy premised on the application of standard funding formulas is not sufficient to ensure substantive equality in education for First Nations students. Appendix XX includes further principles to guide the discussions and interpretation of any future agreements regarding First Nations education.

Self-government agreements recognize the inherent right to self-government for First Nations governments and provides a vehicle for the transfer of funds from the Government of Canada. The fiscal arrangement negotiated in support of the self-government agreement is based on current funding levels through the Department's

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existing programs with additional funding for governance supports. Most fiscal arrangements include provisions that would be triggered in the event that a change in the funding approach under the Indian Act would result in a substantive increase for non-self-governing First Nations. Where identified in their respective agreement, self-governing First Nations would be entitled to benefit from the revised funding approach. Therefore, for the interim approach and as regional First Nations education agreements determine new funding allocations for elementary and secondary education, allowance in the costing for this proposal may be required to update education funding levels in existing self-government agreements.

OPTIONS

Recognizing the need to support stronger First Nations education systems, the Government of Canada has committed to making significant new investments so that First Nations children receive a quality and culturally-relevant education while respecting the principle of First Nations control of First Nations education. In taking steps to fulfill this commitment, Budget 2016 invested \$2.6 billion over 5 years, beginning in 2016-17, as an initial investment to achieve meaningful gains in education outcomes and support the transformation of the current First Nation education system.

In preparing to implement Budget 2016's investments, the Minister argued that new funding alone is not enough. Action is also needed to ensure that the methodology used by Indigenous and Northern Affairs Canada ("the Department") to allocate funding for First Nations education meets the actual costs faced by First Nations schools and communities, is less reliant on short-term proposal-based programming, and is allocated in a manner that is equitable between regions and between communities within a given region. As well, action should also be taken to better support First Nations education organizations that support First Nations students, schools and communities, to support increased incorporation of Indigenous languages and cultural programming in the classroom, and to support those First Nations that are seeking to move to new education governance structures.

To address this, the Department allocated approximately \$545 million in 2016-17 and 2017-18 using the Department's existing programming, while engaging with First Nations on options to address the issues noted above, and to return to Cabinet with the results of this engagement. The Department has worked closely with the Assembly of First Nations' Chiefs Committee on Education (CCOE) and the National Indian Education Council on the design and delivery of the engagement process. The engagement has included community-level discussions, a series of joint technical task teams co-chaired by the Assembly of First Nations and departmental officials along with regional First Nations representatives, and formal "leadership dialogues" with Chiefs at the regional level, as well as ongoing informal dialogues with regional First Nations leadership.

Based on the work of the joint technical task teams and informed by the broader engagement process, in June 2017, the CCOE asked that the Department work with a Co-Development Team² of representatives from the Assembly of First Nations and the National Indian Education Council to develop policy options \ to bring forward for the Minister and Cabinet's consideration. In the spirit of a renewed nation-to-nation relationship and the *Principles respecting the Government of Canada's relationship with Indigenous peoples*, the Department has worked with this team to produce a co-developed proposal to bring forward to Cabinet. The approach below represents the recommended option developed in partnership with the Co-Development Team.

² The co-development team is co-chaired by the Department and the Assembly of First Nations and includes the representatives from the Nishnawbe Aski Nation, Chiefs of Ontario, First Nations Education Steering Committee (British Columbia), Manitoba First Nations Education Resource Centre, First Nations Education Initiative (New Brunswick), and the First Nations Education Council (Quebec). The co-development team is a national collaborative process between First Nations and INAC and is guided by the jointly approved terms of reference for the National Joint Collaboration.

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FIRST NATIONS RECOMMENDED APPROACH:

The Minister would work on a region-by-region basis with First Nations to define the Government of Canada's support for First Nations-controlled education in each region, including new regional funding formulas for First Nations communities, schools and students and funding for activities that will support First Nations student success, as well as establishing clear roles and responsibilities for First Nations education and mutual accountability mechanisms.

1. Create funding equity through the allocation of existing education funding - As a first step, the Minister will allocate current total reference levels and Budget 2016 investments for First Nations elementary and secondary education on a province-by-province basis according to the methodology used to determine 2019-20 funding amounts in Chart 1.0.

The allocation of existing funding is seen as a move towards First Nations attaining sufficient funding for First Nations education, with the recognition that additional funding will be required to support the concluding of regional First Nation Education Agreements.

- The regional allocations for each region will be determined through the following methodology:
 - First, ensuring education funding for each First Nation community is calculated using the provincial education funding models as a base in their respective province. This would include any adaptations to the funding elements/indices (i.e. calculations for remoteness) of the provincial formula to reflect the specific needs of First Nations.
 - Second, additional investments will be calculated for each First Nation to reflect the education elements that are either missing or not adequately addressed in the provincial funding formulas, including costs for: second-level services, student support services, private home placements, transportation, language and culture, and full-day kindergarten.
 - Third, additional funding for each First Nation to ensure funding is protected during this transition phase. If there is decrease in core operational funding for a First Nation from its 2017-18 funding level, the First Nation will remain at its 2017-18 funding level.
- Overall, the sum of the regional allocations will fit within the existing current reference levels, including investments provided in the 2016 Federal Budget.
- The use of provincial education funding models as a base for allocating the existing investments will ensure funding equity for First Nations within provincial boundaries, providing a more objective, transparent and formulaic approach to funding First Nation education.
- The regional allocations determined using this methodology will determine the base funding for First Nations looking to negotiate and conclude a regional First Nation Education Agreement.
- It is expected, however, that as First Nations continue to express their vision of First Nation control of First Nation education through the conclusion of regional First Nation Education Agreements, that additional investments will be required to ensure sufficient funding and ensure a quality education for First Nation students.

2. Implement an interim approach where agreements are not reached by September 2018 – If a regional First Nation Education Agreement is not reached in a given region by September 2018, the Minister will work in partnership with First Nations in each region to implement an interim funding approach as an interim step in 2019-20 based on the provincial allocations identified in Chart 1.0. Interim funding approaches will NOT be applied to those in a regional First Nation Education Agreement, including First Nations in British Columbia under the Tripartite Education Framework Agreement.

The interim funding approach will be based on fixed funding agreements that will provide predictable and sustained funding for First Nation communities and schools. This will

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move away from the reliance on proposal-based funding programs towards a new formulaic approach to funding that allows First Nations to move money within their education budgets to address their education needs within a given year, as well as carry-over funding to the next year to address certain variable needs.

The interim funding approach for First Nations in each province will include:

a) *Interim Funding Allocation Formulas*

- Interim allocation formulas will be based on the respective provincial funding model plus adaptations to address the specific cost drivers for First Nations students, schools and communities.
- These interim allocation formulas would replace current INAC funding for school facilities operations and maintenance, education-related band employee benefits, and funding through the Elementary/Secondary Education Program, including proposal-based funding through the New Paths Program, and First Nations Student Success Program.
- Adaptations to the interim allocation formulas will be discussed and reviewed with First Nations in each region and will be included where provincial formula components require changes to reflect the specific needs and circumstances of First Nation students, schools and communities.
- Interim allocation formulas will be updated annually to account for provincial adjustments and changes to nominal roll, with funding protection to mitigate any decreases for First Nation communities.
- Should the interim allocation formulas produce a decrease in core operational funding for a First Nation from its 2017-18 funding level, the First Nation will remain at its 2017-18 funding level, so as to ensure they do not receive a per-student decrease in core operational funding.
- Given the unique needs for special education programming among First Nation students, changes to the funding approach for special education will be limited in the interim. Funding through the provincial education formulas for special education are not adequate to reflect the specific needs of First Nation students and regionally-based evidence must be gathered to inform appropriate funding methodologies. Existing 2017-18 investments and ongoing commitments for special education, as well as the method of allocating funds to First Nations, will remain until 2020-21 (or until a regional First Nation Education Agreement has been concluded), subject to a review of the federal program completed collaboratively with First Nations and INAC. A portion of the special education program will be funded through the interim allocation formulas (estimated at approximately \$150M), while the remaining funding that will ensure no change in existing commitments for special education will be funded through existing intervention or assessment-based approaches for high-cost special education (estimated at approximately \$115M).
- Provincial funding models focus on school-based funding and do not account for funding to communities without schools. Given the need to retain support for First Nation communities to provide support for students attending provincial schools, the current funding provided for First Nation communities without schools will be funded in addition to the interim allocation formulas.
- The methodology for determining each of the interim allocation formulas, including the adaptations, additions, proxies and data used, must be jointly determined with First Nations to ensure the interim allocation formula most accurately reflects the specific needs of First Nation students, schools and communities.

b) *Targeted investments for language and culture programming, and full-time kindergarten*

- Targeted funding for First Nations language, culture and/or land-based programming will be provided within each interim allocation formula to ensure each First Nation school receives, at minimum, \$1,500 per student. This

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funding would allow for the flexible implementation of local initiatives that support First Nations student achievement, Indigenous language acquisition and retention, and/or support the further integration of First Nation culture in the classroom.

- It is not expected that an investment of \$1,500 per student will support the full costs for implementing or maintaining First Nations language programming, including curriculum development, teacher and learning resources or full language immersion programming across elementary and secondary education, but the interim funding will provide First Nations with an initial step towards ensuring language and culture programming be available to schools. Further funding requirements for language and culture programming, including immersion, will be outlined in the regional First Nation Education Agreements.
- For those regions where a full-time, two-year Kindergarten program (age-4 and age-5 students) is not currently the norm in their province, targeted funding will be provided to those First Nations communities and schools that choose to offer full-time programming for two years.
- It is expected that many First Nation communities will have barriers to immediately implementing a full-time, two-year Kindergarten program (such as infrastructure requirements and/or teacher availability). It is estimated that in 2019-20, there will be 10% of eligible students who will enroll in a new two-year kindergarten program. Following year one, it is estimated that enrolments will reach 25% of eligible students by 2020-21, 45% in 2021-22, 65% by 2022-23 and 85% by 2023-24.
- Funding for the full-time, two-year Kindergarten program will be distributed through the INAC regional office. In the event that regions do not reach the projected full-time kindergarten uptake, the funding allocations will return to INAC headquarters and distributed to those regions where uptake is greater than the projection. If there are remaining Kindergarten allocations, the funds will go to addressing barriers surrounding the implementation of full-time Kindergarten.

c) *Targeted multi-year funding for First Nation education organizations*

- In addition to the interim allocation formulas for each region, targeted multi-year funding would be made available to ensure existing First Nations education organizations are provided with, at minimum, the same level of funding for second-level education services they received in 2017-18 to support First Nations students, schools, and communities.
- This funding is required to ensure existing services provided by First Nation education organizations remains stable while regions are negotiating their regional First Nation Education Agreements.
- For the interim allocation formulas, existing second-level service organizations must identify their current agreement/partnership (i.e. through official designations by First Nation governments) with First Nations in order to receive the targeted multi-year funding.
- Interim funding allocations for second-level services will be calculated using an estimate of 15% of interim allocation formula calculations for band-operated and 5% for provincial/private schools. This estimate will be allocated to INAC regions based on existing service map of second-level service organizations and distributed by INAC regions. Any additional funding beyond the 15% will be put back into the school-based funding formulas for First Nation schools and communities.

3. Regional First Nation Education Agreements – The Government of Canada officials will work with First Nations in each region to negotiate new and/or conclude existing regional First Nation Education Agreements³ that will replace the regional interim funding approach as early as 2019-20. In addition, a supplementary budget ask will be developed for Federal Budget 2019 to identify the additional funding required to conclude these agreements. For Treaty First Nations, only Treaty people will speak on behalf of the Treaties. These regional First Nation Education Agreements will include:

- a) *A new funding formula for First Nations education* – each regional agreement would include a new funding formula for First Nations education that reflects the real needs of First Nation students and ensures that First Nations students have the funding and supports they need to deliver a quality education and promote student success as defined by First Nations in each region.
 - The funding formula will reflect the unique and diverse linguistic, cultural, demographic, historical and geographical needs of all First Nation communities, schools and students. The funding formula will ensure sufficient costing for the vision of First Nation Control of First Nation education as defined by First Nations within the region.
 - The funding formulae will be comprehensive and will either replace the interim funding allocation formula or replace current INAC funding for school facilities operations and maintenance, education-related band employee benefits, and funding through the Elementary/Secondary Education Program, including proposal-based funding through the New Paths Program, and First Nations Student Success Program.
 - Adaptations to the formula to reflect the diverse needs and circumstances of First Nation students, schools and communities. For example, this could include indices that are used to reflect the diverse funding needs for remote schools and communities with low social-economic well-being.
 - Formulas will be updated annually to account for additional provincial investments, changes to the nominal roll, with funding protection to mitigate potential decreases in funding for First Nation communities. Funding levels will be updated within the school year as new investments are made available from provincial systems for both First Nation and provincial schools.
 - Regional funding approaches will include a First Nation-specific approach to high-cost special education that ensures funding will support the unique needs of First Nation students with special needs.
- b) *Targeted multi-year funding for regional strategies*
 - Agreements would also outline work plan or project-based funding to support regional priorities including targeted funding for support organizations for projects to help First Nations students, schools and communities and the overall system “catch up” or build the capacity to effectively deliver education services to students. Funding formulas will reflect ongoing costs to deliver education services, but there will be specific needs for investment in First Nation education to address historical underfunding for First Nation students, communities and schools.
 - Regional priorities will be established by First Nations through their regional agreement and may include activities to support curriculum development and adaptation, IT and connectivity systems and standards, school and learning infrastructure requirements, research projects, professional development and training initiatives, adult and vocational education strategies, and other initiatives as prioritized by the First Nation communities within the region.
 - For these regional strategies, a delivery plan and expected results will be included in the reporting requirements of the respective regional agreement.

³ Note that regional First Nation Education Agreements are not self-government agreements and reflect a funding agreement in regards to education between the First Nation region and the Government of Canada.

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c) *Targeted multi-year funding for First Nations education organizations*

- Agreements would include dedicated multi-year funding to support First Nations education organizations that provide second- and/or third-level education services to First Nations students, schools, and communities.
- This funding and the allocation approach would reflect the investments required to enable First Nations and First Nations education organizations to support the identified roles and responsibilities as set out in the agreement.

d) *Service delivery model*

- Agreements would include a clear education service delivery model for the region that sets out the roles and responsibilities of First Nations and First Nations education support organizations. The agreements would outline the type of education services that support organizations would provide and to which First Nation communities and schools.

e) *Mutual accountabilities mechanisms*

- The agreement would outline mutual accountabilities of First Nations, First Nations education organizations and authorities, and the Government of Canada. Agreements would also outline clear objectives, performance indicators, and reporting requirements.
- For First Nations and First Nation education organizations, objectives, indicators and reporting requirements will be identified and agreed upon within the regional First Nation Education Agreement and may include indicators such as: graduation or high school completion rates, student outcome and student retention data.
- For the Government of Canada, indicators and reporting will include, at minimum: comprehensive, multi-year financial information in regards to elements within the regional agreement; reporting on how Canada is implementing UNDRIP and Calls to Action as it pertains to elementary and secondary education; reporting and transparency on any research, reports and analysis as it pertains to First Nations education that the Government of Canada has initiated. Annual indicators will be collected, analyzed and shared on the basis of OCAP® principles and will be reported back to the First Nations signatory to the agreement.
- The Government of Canada will support First Nations to receive annual reporting in regards to First Nation students attending provincial or private schools. Indicators may include, at minimum: what education services school boards/divisions are providing in regards to the tuition bills/billing rates; justification for any annual increases to billing rates; student outcomes (i.e. learning assessment results and student retention data) for those First Nation students attending provincial schools. There will be multiple reports of attendance rates throughout the year for First Nation students attending provincial schools.

To establish the regional education tables and support the ongoing costs of engagement and negotiations will require \$14 million per year ongoing, to be sourced from Budget 2016's Implementing Transformation funding. It is expected that there will be more than 20 regional Education Agreements to be concluded across the country, and that 20% of the Regional Education Agreements will be concluded for 2019-20, 45% by 2020-21, 80% by 2021-22, and ultimately 100% by 2022-23.

The conclusion of the First Nation Education Agreements will partially be funded based on their regional allocation identified in Chart 1.0. There will be a reserved budget line for \$20 million per year ongoing, starting in 2018-19 for funding First Nation Education Agreements. This funding will be provided to First Nations in BC for the renewal of the Tripartite Education Framework Agreement. Beyond 2018-19, it is expected that many of the regional First Nation Education Agreements will require funding that goes beyond their regional allocation. In such cases, the Minister will support First Nations to submit a complimentary budget ask for the 2019 Federal Budget that will obtain the additional investments required to conclude the regional First Nation Education Agreements and support student success for First Nations across Canada.

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Appendix XX includes further principles to guide the discussions and interpretation of any future agreements regarding First Nations education.

4. Regional Education Technical Tables – The Minister will allocate funding to support First Nations to establish ongoing regional education technical tables, where such tables do not already exist. To establish the regional education tables and support the ongoing costs of engagement and negotiations will require \$14 million per year ongoing, to be sourced from Budget 2016's Implementing Transformation funding.

These tables will be delegated with the responsibility to deliver the following:

a) Implementation of an Interim Funding Allocation Approach.

- The regional education technical table will continue their discussions in the development and implementation of the interim funding allocation approach starting in 2018-19, the First Nation education technicians will work with INAC to agree upon the adaptations, proxies and data used in the methodology outlined in each of the respective provincial funding formulas.
- First Nations and INAC will jointly share their relative analyses, methodologies and data that will inform the interim funding approach.
- Funding will be provided to support the regional technical tables starting in April 2018 and will be ongoing.
- If there is no agreement at the joint regional education technical table on the interim funding allocation approach by September 2018, discussions will continue annually. The mutually agreed-upon adaptations, proxies, data, methodologies will be revised and implemented.

b) Facilitate the development of the regional First Nation Education Agreement

- The regional education technical tables will facilitate the development for regional First Nation Education Agreements. Through these tables, First Nations and INAC will jointly review and cost out all the elements identified in the agreement that will reflect First Nations' vision for First Nation education in their communities and schools.
- The federal government will provide First Nations in each region with funding to support their analysis and research to develop their education system.
- The regional education technical table should have a dispute resolution mechanism when both parties cannot agree to the funding and/or service delivery agreement.

c) Annually review the regional agreements

- The regional education technical tables will evaluate the funding needs for the regional agreement to ensure the regional allocation provides sufficient, predictable and sustained funding.
- If the funding required to support the region's agreement for First Nation education is greater than the regional allocation based on existing reference levels, the Minister will support First Nations in each respective region to submit a complementary budget ask for the 2019 Federal Budget that will seek the additional investments required to support the funding needed to conclude the regional agreement and enable student success in those regions.
- Once in a regional agreement, the regional education technical table will be supported to conduct an annual review of the funding needs. This will include funding for First Nation students attending both First Nation and provincial schools.

5. Increased funding in 2018-19

The Minister will undertake to determine how an initial allocation would be applied to First Nations region-by-region in advance of April 2018. Should the Minister's initial analysis determine that there is likely to be a shortfall between the 2018-19 education funding levels and its regional interim funding allocation formula, the Minister will seek to access any Budget 2016 funding for First Nations education still unallocated in the fiscal framework necessary to address this shortfall through Supplementary Estimates 2018-

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19. The Department will work in partnership with First Nations to finalize the methodology to allocate this funding for 2018-19.

6. Increased funding for First Nations in self-government agreements.

The Government of Canada will meet with First Nations entities under self-government agreements to negotiate the increased funding required, in accordance with the wording of the self-government main agreement and self-government funding agreement.

7. Changes to the Department's Education program suite –The *Grants and Contributions to Support First Nations Elementary and Secondary Educational Advancement* program includes two proposal-based complimentary sub-programs (New Paths to Education, and the First Nations Student Success Program) that will be wholly eliminated or substantially altered under the proposed approach. The Minister will work with the Assembly of First Nations and the National Indian Education Committee to make changes to the program's terms and conditions and performance measurement framework to give effect to the proposed approach and ensure that the program terms and conditions allow for dynamic and flexible program delivery that will support strong student outcomes and strengthen First Nations control of First Nations education.

As well, the existing education partnerships program, will continue and will be provided an ongoing source of funding at \$40 million annually. This complementary sub-program supports first nations and provincial governments to strengthen linkages between their education systems, as well as supporting capacity building in First Nations education organizations that serve First Nations schools, communities and supporting First Nations seeking to establish new models of delivering education.

RISKS

Risk: The proposed option risks being perceived as unilateral or unrepresentative of First Nations communities. While the Department has undertaken an extensive engagement process on First Nations elementary and secondary education with First Nations and First Nations organizations at the community, regional, and national level, some regions have not been involved in all phases of the process. Particularly for Alberta, regional representatives have declined to participate at the co-development table.

Mitigation: [The proposed approach was tabled and approved in principle by the Assembly of First Nations Executive Committee in September 2017 and the Chiefs Committee on Education in October 2017]. Further, this proposal will be presented to the Special Chiefs General Assembly in December for final ratification by Chiefs-in-Assembly. The proposed approach also seeks to enable and maximize regional decision-making on funding approaches, service delivery structures, and mutual accountabilities.

Risk: While agreements in some regions may be in place for the 2019-20 school year or soon after, others will likely require more time and risk staying in the interim phase for several years without realizing the benefits of a negotiated regional agreement.

Mitigation: The interim approach and interim funding allocation formulas represent a significant improvement to the status quo by ensuring that funding for First Nations education is sufficient, predictable and sustained. To help improve the quality of education, even in the interim, the proposed approach will also clarify service delivery and provide stable funding for the delivery of support services. Further, the engagement process will continue to evolve to support First Nations-led dialogue and decision-making at the regional level for implementing the interim approach and to strengthen regional structures for the negotiation of regional agreements over time.

Risk: First Nations education is a shared national responsibility. Provincial governments have an important role to play in improving First Nations student outcomes. About 32 percent of the approximately 107,000 First Nations students ordinarily living on reserve attend provincial schools, and the majority of First Nations students complete their education in provincial systems. However, the proposed approach largely does not

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address the quality of education for First Nations students being delivered in provincial systems.

Mitigation: Provincial governments have increasingly recognized the role they can play. The Government of Canada will continue to support partnerships between provincial ministries of education, school boards, and schools, and First Nations to encourage the sharing of resources and best practices to improve the quality education for all students. Continuing to support the Education Partnership Program on an ongoing basis will allow the Minister to continue to support these partnerships to develop and strengthen their support for strong First Nations student outcomes.

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Appendix XX

Principles to guide the discussions and interpretation of any future agreements regarding First Nations education.

The history of colonization, residential schools and the imposition of federal and provincial laws and policies have had devastating consequences on First Nations children and families, their languages, cultures and social structures. There is a pressing need for transformative change to address the gaps in First Nations' education systems to take into account the rights and aspirations of First Nations communities and the best interests of First Nations children.

The government of Canada has committed to achieve reconciliation with First Nations people through a renewed, nation-to-nation relationship, based on recognition of rights, respect, cooperation and partnership with First Nations.

The broad principles of constitutional law, the fiduciary relationship and the honour of the Crown, as well as the legal standards developed by Canadian Courts and international law define and frame all relationships between the government of Canada and First Nations, as well as Canada's responsibilities in providing services and funding to First Nations.

Consistent with its obligations, the government of Canada must ensure that any measures, arrangements, programmes, policies, agreements or legislation regarding First Nations children's primary and secondary education are developed in collaboration with First Nations communities and recognize and respect the following legal principles. First Nations have the right to self-government and jurisdiction over the education of their members, an aboriginal right protected by s. 35 of the Constitution Act, 1982. This includes the right to determine their own priorities in education, based on their responsibilities to future generations and their inherent rights. The government of Canada must provide adequate funding and resources to enable the development of local capacity and institutions to ensure First Nations' control over education.

First Nations communities and children have the right to effectively participate in and lead any decision-making process that concerns their education. This includes the right to be provided with all necessary information in a timely way to enable them to give their free and informed consent. First Nations' views and concerns must be seriously considered and integrated into any proposed plan of action regarding their education. First Nations children have the right to receive education that is in accordance with their culture, values, traditions and languages and that is free of prejudice and discrimination. Quality and culturally appropriate education is a cornerstone to the preservation and vitality of First Nations societies and to the realization of other fundamental human rights of First Nations children.

First Nations children require special measures in order to enjoy their right to education on an equal footing with other Canadian children. This includes the right to equitable funding that meets their specific needs and circumstances, taking into account First Nations children's cultural, linguistic and geographical needs and historical realities. A strategy premised on the application of standard funding formulas is not sufficient to ensure substantive equality in education for First Nations children.

In order to adequately identify existing gaps and potential areas of discrimination of First Nations children in elementary and secondary education, the government of Canada must ensure that adequate mechanisms and funding are in place to allow First Nations to: i) assess the real needs of communities in order to determine the equitable level of funding required; ii) monitor and evaluate the effectiveness of programs and measures implemented to improve education outcomes of First Nations children; and iii) develop local capacity and institutions to ensure First Nations' control over education.