Comparisons Between the Indian and Northern Affairs Canada (INAC) Compliance Directive and Existing Accountability Processes within the Special Education Program (SEP) in First Nations Schools in BC

Background

The Auditor General, in the November 2004 report, identified some areas of concern with INAC’s administration, accounting for and reporting of results in the elementary/secondary education program. In response to this report, INAC has established a comprehensive Action Plan for First Nations education and a Compliance Directive for INAC Education Programs.

In the same report, the Auditor General highlighted the First Nations Education Steering Committee (FNESC) as an example of a successful First Nations education initiative and further suggested that other regions would benefit by adopting similar practices.

The January 2006 revised National Program Guidelines for the SEP include compliance reviews as being the responsibility of INAC regional offices. This has raised concerns for First Nations in several areas.

1. Student Confidentiality: The files of students with special needs, in particular, contain confidential information regarding assessments, specialist reports, and program needs and should not be available for review without parental consent.

2. FNESC/FNSA manages 100% of the SEP funding in BC. Existing accountability processes that have been established should be acknowledged and considered where applicable.

3. INAC regional offices currently do not have staff with training in special education. Meeting the compliance requirements as outlined would require additional staffing and would most likely reduce the SEP funding available to students.
In addition, the following concerns have been flagged as problematic for BC region, which is demographically unique as compared to other regions in Canada. Also, the unique approach to funding special education programs in BC makes applying some of the directives problematic.

4. The requirement of a three-year cycle for school compliance reviews is especially burdensome in BC given the large number of First Nations schools.

5. The INAC compliance directive seems to be geared towards an assessment based approach to funding special education programs. This is somewhat problematic for BC where an intervention based approach is used. Given the Treasury Board approval for the intervention based approach and recommendation that other regions adopt a similar approach makes the assessment focus of the compliance directive confusing.

In February 2006, the issue of compliance was discussed at a meeting with 20 members of the external assessors team of the FNSA School Assessment project. The recommendation from this meeting was that existing processes that are in place within the FNESC/FNSA management of SEP be compared to the INAC compliance requirements and any gaps identified.

The results of this comparison were then shared at the FNSA AGM in April 2006. Participants were organized into regional breakout sessions to discuss, among other topics, the issue of compliance. During these sessions, the concerns raised in this document were also echoed by participants. The membership then met for further discussion during the AGM and passed the following motion emphasizing the need for further discussion and recognition of the existing BC model and accountability structures.

*It was moved on April 22, 2006 that the FNSA membership stand behind the intervention-based model and existing accountability structures. The FNSA membership gives direction to the FNSA executive to work with the INAC BC Regional Office and INAC Headquarters to accommodate the Intervention-based model within the Compliance Directive.*
The following chart outlines the activities and areas of focus in Section 4: Special Education Program Compliance Review Process of the INAC Compliance Directive document included as Appendix A. It is hoped that this exercise will help to facilitate discussions about this issue between First Nations and the INAC regional office in BC.

A cooperative approach that examines existing accountability practices already established by FNESC/FNSA and accepted by INAC is considered the most logical in terms of both cost-efficiency and in terms of minimizing any additional reporting burdens on First Nations.
<table>
<thead>
<tr>
<th>INAC COMPLIANCE DIRECTIVE</th>
<th>CURRENT SEP ACTIVITY</th>
<th>Information Source</th>
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<tbody>
<tr>
<td><strong>4.4 Focus of Compliance Activity</strong></td>
<td></td>
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<tr>
<td><strong>4.4 a) Student Eligibility for Funding</strong></td>
<td>Note that all on-reserve students who have been formally identified for SEP by a qualified practitioner and whose special education programming is funded under the SEP authority must be included, or be eligible for inclusion, on DIAND’s Nominal Roll-Student Registry data base, similar to any other on-reserve student.</td>
<td>The BC SEP funding is allocated to schools using a base-plus-per capita formula, not to individual students based on assessments. School allocations are determined using the INAC nominal roll. Schools submit workplans to FNESC/FNSA for approval prior to the release of 75% of their allocation.</td>
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<td>Schools, with the use of their SEP allocations and through the FNESC/FNSA coordinated assessment project, are having students assessed by specialists. In 2004/2005, the coordinated assessment project alone included psycho-educational assessment data from 113 students.</td>
<td>Allocation calculations using INAC nominal roll and correspondence with schools</td>
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<tr>
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<td>In 2004/2005, the FNESC/FNSA special education team provided assessments to 217 students.</td>
<td>Workplans/reports</td>
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<tr>
<td></td>
<td>Audited financial statements are submitted to INAC for SEP funding.</td>
<td>Location: held in the FNESC office</td>
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<tr>
<td></td>
<td></td>
<td>Coordinated Assessment Project Report</td>
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<td></td>
<td>First Nations School Annual reporting Form – includes numbers of assessments, IEPs and services.</td>
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<td></td>
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<td>Location: submitted to INAC with BC final SEP report each July</td>
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<td></td>
<td>Data submitted to INAC</td>
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<td></td>
<td></td>
<td>Location: in final SEP report</td>
</tr>
<tr>
<td></td>
<td></td>
<td>SEP schedule</td>
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<tr>
<td></td>
<td></td>
<td>Location: submitted to INAC with SEP final report</td>
</tr>
<tr>
<td>4.4 b) Comparable Educational Standards</td>
<td>Elementary/Secondary education compliance</td>
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<td>----------------------------------------</td>
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<tr>
<th>4.4 c) Tuition Agreement/Arrangement</th>
<th>Elementary/Secondary education compliance</th>
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<tr>
<th>4.4 d) Utilization of a Special Education Policy</th>
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<tbody>
<tr>
<td>The First Nations, Tribal Council and/or FNRMO has adopted and is applying a special education policy/guideline to guide funding and programming decisions. The review will establish that parents and students have access to these guidelines and that a formal process to appeal or follow-up to funding/programming decisions is available to them. These guidelines must be consistent with the Special Education National Program Guidelines.</td>
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<tr>
<th>4.4 e) Student actually in receipt of SEP services</th>
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<tbody>
<tr>
<td>As part of the compliance review of SEP, it must be confirmed that individual students</td>
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</table>
are actually receiving the SEP services they qualify for and that INAC is funding.

| The year and final reports outlining final costs of these activities.  
| Note: The majority of SEP funding has been used to enhance staff resources/capacity and specialists working directly with individual students or small groups of students ($4,064,712.90 in 2004/2005).  
| In 2004/2005 FNESC/FNSA special education staff made 60 school visits, during which the special education services provided to children were discussed and recommendations made. In addition, 14 follow up visits were made to some of the initial 60 schools.  
| In 2004/2005, 138 contacts from First Nations school staff were made with the Special Education Toll Free resource line.  
| Audited financial statements submitted to INAC.  
| Location: FNESC office  
| Some schools/bands include schedules showing payroll and copies of receipts for resource purchases made. To date we have not required this.  
| Specialist data  
| Location: included in BC SEP final report  
| Toll-free Resource Line data kept with coordinator. Summary data submitted monthly to FNESC office. Year-end data included in BC SEP final report  

4.4 f) Students Individual Education Plan (IEP)  
A current IEP is to be maintained in the individual student record for each student who receives SEP services.  
Refer to 4.6.3 a) below
<table>
<thead>
<tr>
<th><strong>4.4 g) Eligible Expenditures and Maximum Amounts Payable</strong></th>
<th>Refer to <strong>4.6.3 c) below</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligible expenditures and maximum Amounts Payable are included in the Special Education National Program Guidelines. The maximum cost per student is not to be exceeded.</td>
<td></td>
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</table>

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<tr>
<th><strong>4.4 h) Quality of File Management</strong></th>
<th>FNESE/FNSA maintains school SEP files for each First Nations school each year. Within each file is the allocation letter, workplan submission with any correspondence with the school, signed contribution agreements, final reports, First Nations School Annual reporting form.</th>
</tr>
</thead>
</table>
| **FNESC School files**              | Audited Financial Statement – SEP schedule  
  Location: included with BC SEP final report |
| **Location:** SEp office            | Assessment referrals for Coordinated Assessment Project  
  Location: FNESC office |
| **FNESC School files**              | School Special Education policies are kept together alphabetically in a file.  
  Location: FNESC office |
| **Location:** FNESC Office          | The ACCPAC accounting software is used to maintain the financial records. The financial officer works in conjunction with an accountant. Audits are completed each year and audited financial statements included in the FNESC and FNSA annual reports. |
| **Location:** FNESC Office          | Referrals for assessments in the coordinated assessment process are kept in a locked filing cabinet to maintain the confidentiality and privacy of students. |
| **Location:** FNESC Office          | **FNESC/FNSA maintains school SEP files for each First Nations school each year. Within each file is the allocation letter, workplan submission with any correspondence with the school, signed contribution agreements, final reports, First Nations School Annual reporting form.** |

Comparisons Between the Indian and Northern Affairs Canada (INAC) Compliance Directive and Existing Accountability Processes within the Special Education Program (SEP) in First Nations Schools in BC 7
A resource, “Student Records Handbook for First Nations Schools” was created to assist with development and maintenance of student files. A copy of this resource was sent to every school. In addition, it is available in the FNESC website for free download.

<table>
<thead>
<tr>
<th>4.6.3 On-Site Reviews</th>
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<tbody>
<tr>
<td><strong>4.6.3 a) verification that an IEP is on file for all High Cost Special Education students funded by the SEP.</strong></td>
</tr>
<tr>
<td>Individual students are not funded specifically within the BC model of SEP delivery, so matching IEPs with students receiving funding is not a good fit. IEPs are, however, an integral part of the process. Ongoing data is collected in this area as is frequent support for capacity building and training in the development of student IEPs. The FNESC special education staff promote IEPs as best practice in special education. During school visits, the IEP process is facilitated with parents, staff, specialists where applicable, and students in attendance. The FNESC staff write the sample IEP and leave a CD with the IEP format for the school to continue to use. In 2004/2005, the special education staff facilitated and wrote 47 IEPs in 26 schools. In addition, 39 workshops were conducted that included this</td>
</tr>
<tr>
<td>Location: included in BC SEP final report to schools.</td>
</tr>
</tbody>
</table>
Comparisons Between the Indian and Northern Affairs Canada (INAC) Compliance Directive and Existing Accountability Processes within the Special Education Program (SEP) in First Nations Schools in BC

<table>
<thead>
<tr>
<th>4.6.3 b) that where High Cost Special Education students are being educated under a tuition agreement/arrangement (at a provincial or private school), that this is appropriately reflected, that payments are only for those students for which Canada accepts responsibility, and that INAC is being billed appropriately, and according to the terms and conditions of the tuition agreement/arrangement and First Nations funding arrangement.</th>
<th>Not applicable in BC</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.6.3 c) that Eligible expenditures and Maximum Amounts Payable under the SEP are not exceeded.</td>
<td>Funding is provided to schools, therefore, maximum amounts payable per individual student are not</td>
</tr>
</tbody>
</table>
### Additional High Cost Funding applications

**Location:** FNESC office

| 4.6.3 d) that all special education payments made on behalf of a student are in accordance with the National Special Education Program Guidelines. | Schools submit workplans outlining their intention to use the special education funding. The workplans are reviewed by the FNESC/FNSA special education manager. Any schools that submit workplans with activities that are not in accordance with the National SEP Guidelines are contacted, and the workplans are revised jointly. Schools also sign contribution agreements prior to the release of funding agreeing to the terms and conditions of the program. | Workplans  
Contribution agreements  
Final Reports  
| **Location:** FNESC office |
| 4.6.3 e) that the controlled allotment is being respected and that the funds are being used for their intended purpose. | Workplan and final report submissions, contribution agreements for SEP funding and audited financial statements should satisfy this requirement. | Location: FNESC office |
Appendix A: Special Education Section of the INAC Education Programs Compliance Directive October 1, 2005

4.0 SPECIAL EDUCATION PROGRAM COMPLIANCE REVIEW PROCESS

4.1 Policy Statement with respect to Special Education
The funding for the Special Education Program (SEP) is an investment in programs and services for First Nations children with identified needs. Program funds have been targeted to improve the quality of education and level of support services for eligible students with special needs.

4.2 Definitions (Specific to SEP; note that all the definitions under Elementary/Secondary Education are also relevant to Special Education).

Assessment
Assessments are carried out by a qualified practitioner for the purpose of determining whether a student has any special educational needs, including the identification of High Cost Special Needs Students.

High Cost Special Needs Student (Student)
Students eligible for funding under the SEP are those with special education needs that cannot be met within the resources intended for the general student population. Broadly speaking, special education needs of students fall within a continuum of mild to moderate, moderate to severe and severe to profound.

Individual Education Plan (IEP)
A written plan describing the special education programs and/or services required by a student. It identifies learning expectations that are modified from or alternatives to the expectations given in the curriculum policy document for the appropriate grade and subject or course, and/or any accommodations and special education services needed to assist the student in achieving his or her learning expectations. Other terminology is occasionally used, with acronyms such as IPP, PPP, IEPP and JLP.

Regional Managing Organizations (FNRMOS)
Entities controlled by First Nations and are accountable to them for program delivery (direct or indirect), financial management of SEP funds and achievement of planned results. Their role is to provide second and third level services to support band-operated schools in the design and delivery of special education policies and programming, facilitate professional development opportunities, conduct research, and liaise with the provincial government and other federal government departments.

4.3 Background
The SEP program was established in 2003 and provides support to children with behavioural and/or physical challenges such as autism, learning disabilities, deafness and
blindness. Broadly speaking, special education needs of students fall within a continuum of mild to moderate, moderate to severe and severe to profound. Special needs that are at the lower end of the continuum are expected to be addressed within the resources intended for the general student population (the “low cost special education” provisions of the Elementary/Secondary Education Program); only special education needs that are more costly to address (generally ranging from moderate to profound) are eligible for funding under the SEP.

4.4 Focus of Compliance Activity

Compliance reviews with respect to SEP cover many of the same issues as are dealt with under Elementary/Secondary Education Compliance review. Exceptions or additional items are as noted below:

a) Student Eligibility for Funding
   Note that all on-reserve students who have been formally identified for SEP by a qualified practitioner and whose special education programming is funded under the SEP authority must be included, or be eligible for inclusion, on DIAND’s Nominal Roll-Student Registry data base, similar to any other on-reserve student.

   Note however, that a student under the SEP may also be in attendance at a specialized school such as a school for the deaf and/or blind.

b) Comparable Educational Standards (as for Elementary/Secondary)

c) Tuition Agreement/Arrangement (as for Elementary/Secondary)

 d) Utilization of a Special Education Policy
   The First Nations, Tribal Council and/or FNRMO has adopted and is applying a special education policy/guideline to guide funding and programming decisions. The review will establish that parents and students have access to these guidelines and that a formal process to appeal or follow-up to funding/programming decisions is available to them. These guidelines must be consistent with the Special Education National Program Guidelines.

e) Student actually in receipt of SEP services
   As part of compliance review of SEP, it must be confirmed that individual students are actually receiving the SEP services they qualify for and that INAC is funding.

f) Students Individual Education Plan (IEP)
   A current IEP is to be maintained in the individual student record for each student who receives SEP services.
g) Eligible Expenditures and Maximum Amounts Payable
Eligible expenditures and Maximum Amounts Payable are included in the Special Education National Program Guidelines. The maximum cost per student is not to be exceeded.

h) Quality of File Management
First Nations and other administering organizations must maintain complete and well-organized files for their overall SEP program and for each individual High Cost Special Education student, consistent with requirements for security, access to information and privacy. The details of information to be maintained in these files is set out in Annex J below.

4.5 Access to Records

As in the case of Elementary/Secondary Education, the administering authority are to maintain a nominal roll of students (including special needs students), using the forms and format prescribed by the FNNRG and the applicable Regional Reporting Guide, and are required under their funding arrangement to provide the department with the NR of students enrolled as of September 30 of each year (see also Annex F).

As provided in the departmental funding agreements, the Minister may request access to such records and to Local Program Guidelines for compliance reviews for the purpose of determining eligibility and adherence to established standards; and for review of the quality of data which the Minister uses for resourcing, operations, accountability, policy planning and statutory requirements.

4.6 Review Process

The review process for Special Education Program may take place at the same time and resembles the review process for the Elementary/Secondary Education.

4.6.1 Regional Program Management Regime
As for Elementary/Secondary Education, except that the following documents should also be available in the regional office:

a) a copy of the Treasury Board-approved terms and conditions for the Special Education Program, and of the Special Education National Program Guidelines;
b) the national compliance directive for the SEP Program (this document);
c) regional guidance on SEP; and
d) the First Nation’s or FNRMO’s Special Education Policy.

4.6.2 In-Office Reviews
(as for Elementary/Secondary Education)
4.6.3 On-Site Reviews

As for Elementary/Secondary Education, except that the file review should also include:

a) verification that an IEP is on file for all High Cost Special Education students funded by the SEP;
b) that where High Cost Special Education students are being educated under a tuition agreement/arrangement (at a provincial or private school), that this is appropriately reflected, that payments are only for those students for which the Canada accepts responsibility, and that INAC is being billed appropriately, and according to the terms and conditions of the tuition agreement/arrangement and First Nations funding arrangement;
c) that Eligible expenditures and Maximum Amounts Payable under the SEP are not exceeded;
d) that all special education payments made on behalf of a student are in accordance with the National Special Education Program Guidelines; and
e) that the controlled allotment is being respected and that funds are used for their intended purpose.

Annex D provides the information and records that needs to be maintained by First Nations and other administering organizations specifically with respect to SEP.

4.6.4 On-site Resolution of Non-Compliance
(as for Elementary/Secondary Education)

4.6.5 Exit Briefing
(as for Elementary/Secondary Education)

4.6.6 Follow-up to On-site Review

As for Elementary/Secondary Education, except that in order to meet the requirement of a Contribution “Special Purpose Allotment”, the program terms and conditions must be fulfilled. Any surpluses or unexpended funds must be recovered by the department.

4.6.7 Final Review
A final review of duplication and validation checks is subsequently performed back in the regional office, based on any changes or other new information flowing from the on-site compliance and data quality review process. Errors found on-site must be corrected on the NR system by regions. Regions must notify the Recipient of any changes to the NR system. In all cases, corporate records should contain accurate and up to date information.

4.7 Financial Impact of Compliance Activity

As for the Elementary/Secondary Education Program, Regions are to implement and maintain a system to capture and report on any discrepancies found in the course of the SEP compliance review. As this is a controlled allotment, ineligible expenditures/surpluses will be recovered through the audit process.

4.8 Frequency

Compliance review of Special Education program delivery may be carried at the same time as Elementary/Secondary Education is being reviewed. All First Nations schools, and provincial or private and federal schools attended by First Nation High Cost Special Education students shall undergo an on-site review, at a minimum once every three years. Schools should continue to be monitored or assessed on an ongoing basis (over and above a regularly scheduled compliance review) where enrolment increases or decreases by 4% or more from one school year to the next.

It is recommended that the region have a three year compliance review plan and that the schools selected are representative of the entire school population for the review year. The schools selected in year one will normally be excluded from the sample in years two and three. Where significant areas of non-compliance are found, INAC regional offices will review the management of a First Nation’s SEP program at least annually until the issues are resolved.
First Nation and other administering organizations should maintain the following information on file for each High Cost Special Education student. This information is essential to assurance that National Program Guidelines are being followed.

Note that with respect to each individual student file, these files are confidential and must be kept under lock and key.

1.0 Student’s Individual Education Plan (IEP)

Each student receiving special education funding will have a written Individual Education Plan describing the special education program and/or services required by a particular student, identifying learning expectations that are modified from or alternative to the expectations given in the curriculum policy for the appropriate grade and subject or course, and/or any accommodations and special education services needed to assist the student in achieving his or her alternative expectations.

Furthermore, the IEP:

   a) helps teachers monitor the student’s progress and provides a directive for communicating information about the student’s progress to parents and to the student;
   b) must be updated periodically to record any changes in the student’s special education program and services that are found to be necessary as a result of continuous assessment and evaluation of the student’s achievement of annual goals and learning expectations; and
   c) reflects the school and the principal’s commitment to provide the special education program and services, within the resources available to the school need to meet the identified strengths and needs of the student.

The administering authorities (as set out in the National Special Education Program Guidelines) are responsible for the development and implementation of student’s IEPs.

2.0 Attendance

The administering authorities must maintain individual student records, in which must be included in the student’s IEP’s.
3.0 Other Student Records

The administering authorities must maintain individual student records, in which must be included in the student’s IEP’s, as well as:

a) Student’s full name;
b) Student’s current grade and/or special education class placement;
c) Relevant medical conditions;
d) Nominal roll identification number, birth date, gender, guardians etc.;
e) Background (academic history, language spoken at home, medical information, previous testing/assessment, etc.);
f) Regional and Provincial Determined High-Cost Funding Category (e.g. moderately handicapped);
g) Description of Presenting Problem/Current Level of Performance (e.g. academic and behaviour);
h) Intervention;
i) Relevant assessment data (results and recommendations of relevant assessment reports);
j) Goals (include strengths, needs and current level of achievement);
k) N.B.: Describe realistic and observable achievements;
l) Records of all payments made on behalf of the student, identifying what each payment is for;
m) Funding Requested;
n) Other unique circumstances; and
o) Must obtain parental consent on release of student information.