

SUMMARY
CANADA-FIRST NATION EDUCATION JURISDICTION AGREEMENT
(Version approved by NFNs June 18, 2021)

Parties:

- The parties to the Canada-First Nation Education Jurisdiction Agreement (“Jurisdiction Agreement”) are:
 - Canada, represented by the Minister of Crown-Indigenous Relations (“Canada”), and
 - the Participating First Nation, represented by Chief and Council (“PFN”).

Whereas provisions:

- The whereas provisions provide historical, political and legal context to the Jurisdiction Agreement, but are not legally binding.

Part 2 – Exercise of Jurisdiction

- The parties recognize PFN’s jurisdiction over education on PFN land. This jurisdiction extends to non-member students who attend the PFN’s school(s).
- The PFN agrees to provide kindergarten to grade 12 education to eligible students attending the PFN’s school(s). The PFN will also pay for the education of eligible students who are enrolled in a public school or an independent school.
 - An “eligible student” must be resident on PFN land (i.e. PFN reserve) and must be either: (a) 4 to 21 years old and enrolled in kindergarten to grade 12, or (b) at least 18 years old and enrolled in an adult education program that is funded under the BC Tripartite Education Agreement (BCTEA) or its successor.
- The PFN also agrees to provide education to students attending the PFN’s school(s) who live: (a) off-reserve, subject to receiving reciprocal tuition from the Province, and (b) on another First Nation’s reserve, subject to receiving funding from or on behalf of that other First Nation.
- The PFN must provide the parents of non-member students with mechanisms for providing input into decisions that directly and significantly affect the rights of non-member students or their parents. These mechanisms must be included in the PFN’s education law.
- The PFN will provide education that supports the transfer of students to and from other schools.
- The Jurisdiction Agreement confirms the legal status of the PFN and obliges the PFN to exercise its authority in a manner consistent with the Jurisdiction Agreement, the PFN’s education laws and the PFN’s education law-making protocol.

- The PFN's education law-making protocol must include procedures for: passing and amending education laws, challenging the validity of those laws, amending the protocol itself, and addressing conflicts of interest.
- The PFN has the authority to pass education laws applicable on PFN land in relation to the education it provides, which includes the authority to do other things as may be necessarily incidental to the exercise of that jurisdiction.
- The PFN may delegate its law-making authority to the First Nations Education Authority (FNEA). The PFN may delegate its other duties (other than law-making) to another legal entity.

Part 3 – Community Education Authority (CEA)

- The PFN may pass a law establishing a Community Education Authority (CEA) to operate its education system. That law must set out the powers, duties, composition and membership of the CEA.
- Two or more PFNs can establish a single CEA.
- Where the PFN establishes a CEA, the CEA will have the capacity, rights, powers, and privileges of a natural person as set out in the PFN's law and be bound by that law.
- Instead of establishing a CEA under its own law, the PFN may identify an existing or new legal entity established under federal or provincial law as its CEA (e.g. a society under the BC *Societies Act*). The PFN may provide the CEA with additional powers, but these may not be inconsistent with the law that established the CEA as a legal entity.

Part 4 – First Nations Education Authority (FNEA)

- On the Effective Date, each PFN must appoint two directors to sit on the First Nations Education Authority (FNEA). One of the two directors appointed by each PFN must be a member of that PFN.
- The responsibilities of the FNEA include:
 - assisting the PFN in developing the capacity to provide education,
 - establishing standards for curriculum and exams for courses provided by the PFN that are necessary to meet graduation requirements,
 - providing a teacher certification process for teachers in the PFN's school(s), other than teachers who teach only the PFN's language and culture, and
 - providing for the certification of the PFN's school(s).
- "Standards" for curriculum and exams for courses required to graduate include: both graduation requirements, and the process for evaluating locally developed First Nation courses that are required for graduation.
- The PFN can only pass its education law(s) after it has signed the Education Co-Management Agreement with the FNEA.

- The Education Co-Management Agreement between the PFN and the FNEA will address:
 - the FNEA's key responsibilities (i.e. establishing graduation requirements, the course approval process, teacher certification and school certification), and
 - the incorporation by reference in the PFN law(s) of the process, standards and requirements regarding the FNEA's key responsibilities.

Part 5 – Registry, Enforcement and Adjudication

- The PFN must establish and maintain a law registry. When the PFN passes an education law, it must provide copies to Canada and BC.
- The PFN must establish processes for appeal or review of administrative decisions made by the PFN Council or the CEA. Those appeal processes may include an appeal to the BC Supreme Court.
- Disputes between individuals under a PFN education law may be heard by the BC Supreme Court.
- The PFN may appoint officials to enforce their education laws.
- Violations of PFN education laws may be brought before the BC Provincial Court in accordance with summary conviction procedures. The PFN may retain a prosecutor or enter into an agreement with Canada or BC to prosecute offences under PFN education laws.

Part 6 – Application of Laws

- Federal laws continue to apply alongside PFN education laws. In the event of a conflict between federal or provincial law and a PFN law, the PFN law will prevail on PFN land, with some exceptions (e.g. federal laws in relation to matters of overriding national importance).
- PFN education laws must be consistent with the Jurisdiction Agreement.
- PFN education laws do not apply to Canada.
- The Jurisdiction Agreement prevails over the PFN's education law-making protocol to the extent of any inconsistency.
- The *Canadian Charter of Rights and Freedoms* applies to the PFN and any body (e.g. a CEA or the FNEA) exercising the PFN's jurisdiction and authority over education under the Jurisdiction Agreement.
- Sections 114 to 122 of the *Indian Act* will no longer apply to the PFN after it has passed an education law.

Part 7 – Financial Arrangements

- The parties agree to work together to advance certain goals, including closing well-being gaps in education.
- The parties agree to enter into a Canada-First Nation Education Jurisdiction Funding Agreement (“Funding Agreement”) to enable the PFN to: (a) exercise its rights and carry out its responsibilities set out in the Jurisdiction Agreement, and (b) support the advancement of the goals set out in the Jurisdiction Agreement.
- Canada’s Own-Source Revenue (OSR) Policy will not apply to the calculation of funding under the Funding Agreement (i.e. there will be no OSR offsets deducted from education funding).
- Any funding to be provided under the Funding Agreement is subject to appropriation by the federal Parliament. If the PFN does not receive the agreed amount of funding, it does not have to meet its corresponding obligations to provide education.
- The amount of education program funding provided by Canada to the PFN will not be less than the amount received by First Nations that are not PFNs.
- If the Funding Agreement is terminated and not replaced, funding for education programs will be provided on the same the terms as it was before, and that funding amount will not be less than the amount received by First Nations that are not PFNs.

Part 8 – Implementation

- There will be a 10-year implementation plan for the Jurisdiction Agreement, which identifies the parties’ obligations and how the plan may be amended, renewed or extended.
- The implementation plan will be attached to the Jurisdiction Agreement, but is not legally binding.
- On the Effective Date, each of the parties will appoint a senior official to address implementation.

Part 9 – Dispute Resolution

- This part sets out the process for resolving disputes that may arise regarding the Jurisdiction Agreement, including negotiation, mediation and, if the parties agree, arbitration.
- The parties agree not to take a dispute to court until they have tried to resolve it through mediation or, if they have agreed to arbitration, they have received an arbitration decision.

Part 10 – Ratification

- Prior to a ratification vote, the PFN must inform its members of their right to vote, the content of the Jurisdiction Agreement and the content of the education law-making protocol.

- Ratification by the PFN requires that at least 50% of those who cast a vote, vote in favour of entering into the Jurisdiction Agreement and adopting the education law-making protocol.
 - The PFN Council will determine the minimum voting age by resolution. The PFN Council may, by resolution, increase the minimum % required for approval.
- Ratification by Canada requires that the Minister of Crown-Indigenous Relations (with the authorization of Cabinet) sign the Jurisdiction Agreement and that Cabinet pass an order-in-council adding the name of the PFN to the federal enabling legislation's schedule of PFNs.

Part 11 – General Provisions

- The Jurisdiction Agreement is not a treaty or a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982* and does not affect the Constitution of Canada.
- One of the purposes of the Jurisdiction Agreement is to implement elements of the inherent right of self-government recognized and affirmed by section 35 of the *Constitution Act, 1982* relating to jurisdiction over education.
- The Jurisdiction Agreement is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*, and not as:
 - creating, amending, defining the nature and scope of, or abrogating or derogating from those rights,
 - prejudicing, limiting or restricting the position that the parties may take at any time with respect to the aboriginal or treaty rights of the PFN or the exercise of those rights, or
 - restricting or limiting the PFN from entering into other agreements with Canada or other parties with respect to any matter.
- If the parties are engaged in discussions under a separate inherent right implementation process (e.g. treaty, comprehensive self-government or other reconciliation negotiations), they will discuss whether there is a need to transition from the exercise of jurisdiction over education under the Jurisdiction Agreement to the exercise of jurisdiction under an agreement negotiated through the other process.
 - Such discussions would: (a) take place in the context of the other process, (b) consider whether the federal enabling legislation would continue to apply to the PFN, (c) consider whether the Jurisdiction Agreement needs to be amended, replaced or terminated, and (d) fiscal support for education and related governance responsibilities.
- If a PFN initiates the implementation of the inherent right on its own initiative in a manner that would take it outside the Jurisdiction Agreement (e.g. if it ceases to be an *Indian Act* band), the parties will meet to discuss whether the Jurisdiction Agreement needs to be amended, replaced or terminated.

- Nothing in the Jurisdiction Agreement affects the ability of the PFN or its members to participate in federal programs established for Indians, Bands or aboriginal people, in accordance with criteria for those programs.
- Members of the PFN will be eligible to participate in educational programs established by Canada or BC, in accordance with criteria established for those programs, to the extent that the PFN has not assumed responsibility for those programs under a funding agreement.
- The PFN and Canada will indemnify one another against claims, liabilities and demands arising from their own acts or omissions and those of their officers, employees and agents in the exercise of their powers, duties and functions under the Jurisdiction Agreement.
- The Jurisdiction Agreement may be amended by consent of the parties. The PFN's consent to any amendment will require a resolution of the PFN Council. Canada's consent may require an Order in Council.
- This Part also contains provisions regarding:
 - access to information and protection of privacy,
 - Canada's international legal obligations,
 - acknowledgement that the Jurisdiction Agreement is the entire agreement between the parties,
 - requirement for any waiver to be in writing,
 - general interpretation rules,
 - calculation of time under the Jurisdiction Agreement,
 - the parties' commitment to do what is reasonably required to carry out obligations under the Jurisdiction Agreement,
 - the parties' commitment to remedy or amend a provision found by a court to be invalid, illegal or unenforceable, and acknowledgement that the remaining provisions will not be affected, and
 - notices and communications.